# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1900.

## No. 237.

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THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

COLUMBUS J. ESLIN, ADMINISTRATOR OF DANIEL A. CONNOLLY, DECEASED, ET AL.

APPEAL FROM THE COURT OF CLAIMS.

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Court of Claims.

COLUMBUS J. ESLIN, ADMINISTRATOR OF DANIEL A. CONNOLLY, deceased,
*vs.*
THE DISTRICT OF COLUMBIA, } No. 375.

RAWLEIGH W. DOWNMAN AND OSCEOLA C. GREEN,
*vs.*
THE DISTRICT OF COLUMBIA, } No. 280.

WILLIAM M. GALT,
*vs.*
THE DISTRICT OF COLUMBIA, } No. 162.

and

SAMUEL J. RITCHIE,
*vs.*
THE DISTRICT OF COLUMBIA, } No. 150.

Consolidated.

I.—*Pleadings in the case of Eslin, admr. of Connolly, No. 375, D. C.*

The claimant filed his original petition April 2, 1883. The
2 defendant filed a traverse February 25, 1884. The claimant, by leave of court, filed an amended petition December 2, 1885, and subsequently, to wit, on November 24, 1886, the claimant, by leave of court, filed a second amended petition, which is as follows:

COLUMBUS J. ESLIN, ADMINISTRATOR OF DANIEL A. CONNOLLY,
*vs.*
THE DISTRICT OF COLUMBIA. } No. 375. Filed November 24, 1886. J. R.

*Amended petition.*

(Filed by leave of court.)

*To the Honorable the Court of Claims:*

Your petitioner respectfully represents:

I. That he is the administrator of Daniel A. Connolly, deceased.

II. That heretofore, to wit, on the 24th day of April, 1872, the District of Columbia entered into a contract with the said Daniel A. Connolly, No. 243, whereby he was to grade Massachusetts avenue from New Jersey avenue to Lincoln square, in the city of Washington; that subsequently, to wit, on the 4th day of May, 1875, said contract was extended to embrace work upon B street south, C street north, A street south, D street north, Delaware avenue, E street north, 6th street east, and 1st street east; that subsequently, to wit, on the 16th day of October,

1875, said contract was extended to relay the old material on Massachusetts avenue, between New Jersey avenue and Lincoln square, wherever directed by the engineer of the District of Columbia; that at divers times various other extensions of said contract were made, and orders for extra work issued, particularly for work on 5th street east,
3 between D and H streets north; that the work under said contract, extensions, and orders for extra work, was fully performed by said Connolly, but that a balance is still due from the District of Columbia to this claimant on said accounts, amounting to $9,349.95, with interest.

III. That the District of Columbia entered into another contract, No. 1028, with said Daniel A. Connolly, to wit, on the 30th day of January, 1874, whereby said Connolly agreed to grade certain parts of C street north and 2d street east, in the city of Washington; that subsequently, to wit, on the 15th day of May, 1875, said contract was extended to embrace the replacing of old material on said streets wherever ordered; that the work under said contract and extension was fully performed by said Connolly, but that a balance is still due from the District of Columbia to this claimant on said accounts, amounting to $1,945.09, with interest.

IV. That the District of Columbia entered into another contract with said Daniel A. Connolly, No. 349, to wit, on the 24th day of June, 1872, to set the curbstones, lay and put down the brick foot-pavements, and pave the gutters on a part of 1st street southeast; that said Connolly fully performed the work under said contract, but that a balance is still due from the District of Columbia to this claimant on said account, amounting to $785.56, with interest.

V. That the District of Columbia entered into another contract with said Connolly, No. 665, to wit, on the 22d day of April, 1873, to grade, set the curb and lay brick foot-pavements on parts of B street north, and to grade alley in square No. 758; that said Connolly fully performed said contract, but that a balance is still due from the District to this claimant on said account, amounting to $556.25, with interest.

VI. That the said District of Columbia entered into another contract with said Connolly, No. 690, to wit, on the 20th day of May, 1873, to do certain grading and other work on parts of B street north and 1st
4 street east; that said work was fully performed by said Connolly, but that a balance is still due from the District to this claimant on said account, amounting to $30.49, with interest.

VII. That the said District of Columbia entered into another contract with said Connolly, No. 1035, to wit, on the 5th day of March, 1874, to grade, set the curbs, and lay brick foot-pavements on Carroll street; that said contract was fully performed by said Connolly, but that a balance is still due from the District to this claimant on said account, amounting to $42.53, with interest.

VIII. That the District of Columbia entered into another contract with said Daniel A. Connolly, No. 209, to wit, on the 20th day of January, 1872, to set the curbstones, lay and put down the brick foot-pavements, and the guttering on a part of 4th street east; that said Connolly fully performed the work under said contract, but that a balance is still due from the District to this claimant on said account, amounting to $199.92, with interest.

IX. That the said District of Columbia entered into another contract with said Connolly, No. 231, to wit, on the 18th day of April, 1872, to construct a sewer in front of square 732, connecting with the sewer of 2d street; that said work was fully performed by said Connolly, but that a balance is still due from the District to this claimant on said account, amounting to $1.73, with interest.

X. That the District of Columbia entered into another contract with said Connolly, No. 595, to wit, on the 12th day of November, 1872, whereby the said Connolly agreed to set the curbstones, and to pave the gutters on part of A street southeast, and to grade a part of A street southeast, in the city of Washington; that subsequently, to wit, on the 8th day of April, 1874, the District of Columbia entered into another contract with said Connolly, No. 1057½, to pave a part of A street southeast; that the work under said contracts was fully performed by said Connolly, but that a balance is still due from the District to this claimant on said accounts, amounting to $66.65, with interest.

XI. That the District of Columbia entered into another contract with said Connolly, No. 828, to wit, on the 8th day of August, 1874, to excavate and complete a sewer in alley in square 686; that said contract was fully performed by said Connolly, but that a balance is still due from the District to this claimant on said account, amounting to $300.04, with interest.

XII. That demand has been made upon the District of Columbia for the amounts above stated, but that no part thereof has been paid; that your petitioner is sole owner of said claim and the only person interested therein; that no assignment or transfer of said claim, or of any part thereof, has been made; that said claimant is justly entitled to the amount herein claimed, after allowing all just credits and offsets; that the claimant and said Daniel A. Connolly have, at all times, borne true allegiance to the Government of the United States, and have not in any way aided, abetted, or given encouragement to rebellion against the said Government; that he believed the facts as stated in this petition to be true.

Wherefore he prays judgment against the District of Columbia for $13,278.21, with interest.

CHARLES & WILLIAM B. KING,
*Attorneys for Claimant.*

DISTRICT OF COLUMBIA, *ss:*

Columbus J. Eslin, being duly sworn, deposes and says: I am the claimant in this case, and have read the foregoing petition. The facts therein stated are true to the best of my information and belief.

COLUMBUS J. ESLIN.

Sworn to and subscribed before me this 23d day of November, 1886.

[SEAL.] WILLIAM TWOMBLY,
*Notary Public in and for the District of Columbia.*

*Order of consolidation.*

DECEMBER 14, 1885.

The motion to consolidate this case, No. 375, D. C., with numbers 162 and 280 vs. The District of Columbia was allowed by the court.

6 *In the case of Downman and Green, No. 280, D. C.*

The claimants filed their original petition December 15, 1880, which is as follows:

RAWLEIGH W. DOWNMAN AND OSCEOLA C. Green, claimants, *vs.* THE DISTRICT OF COLUMBIA, DEFENDANT. } No. 280. Filed Dec. 15, 1880. J. R.

*To the honorable the Court of Claims:*

The claimants, Rawleigh W. Downman and Osceola C. Green, respectfully represent:

I.

That they are citizens of the United States and of the District of Columbia.

II.

That heretofore, to wit, on the day of , A. D. , the board of public works for the said District entered into contracts Nos. 243 and 1028 with one D. A. Connolly.

By said contract No. 243 the parties thereto agreed that said Connolly should grade Massachusetts avenue between Lincoln square and New Jersey avenue, and on B, C, A, E, D, and Sixth streets, and Delaware avenue, and to relay old material on Massachusetts avenue, as in said contracts and extensions more particularly set forth, and should be paid therefor as therein set forth.

And by contract 1028 the parties thereto agreed that said Con-
7 nolly should grade G street between Second and Fifth streets, and Second street between Maryland avenue and D street, which was extended by the Commissioners to reset curbs and relay brick pavement on G street between Second and Fifth streets northeast, and should be paid therefor as in said contract and extension set forth.

That the said Connolly fully performed the said contracts on his part.

That the said D. A. Connolly executed to Downman and Green a power of attorney, and certain other instruments of writing, whereby he assigned unto the said Downman and Green, claimants, all his interests and rights under said contracts 243 and 1028, and in the other work herein below set forth, and in the payment therefor, and authorized the claimants to demand, collect, receipt for, and settle the said claims and demands under said contracts, and for said other work, and to credit all such receipts to said Connolly on his indebtedness to claimants. And claimants are entitled, in virtue of said instruments and assignments and in virtue of said

indebtedness still owing by said Connolly to claimants, to collect and receive said moneys herein named.

Claimants further say that of the amount due by the defendant to the said Connolly, under said contracts, claimants assigned and sold to Samuel J. Ritchie the sum of $7,050, with the accrued interest thereon, being the amount reported as found due to the said Connolly at the date when the work under said contracts was stopped in virtue of the act of Congress, and in this amount so assigned to Samuel J. Ritchie, and the interest thereon, these claimants have no interest or ownership.

Claimants further say that besides and in addition to the said amount and interest so assigned to the said Ritchie, there became due to the said Connolly, and which accrued to claimants under their said assignments, the following items:

8 The said Connolly was charged in his account under the said contract for old material which was afterwards accounted for to the said District, as near as claimants can now state, the sum of $2,800, and which claimants are now entitled to be paid, with interest.

The said Connolly became and is entitled, in compensation for work done under said contracts in excess of the said $7,050 so assigned to the said Ritchie, to the sum of $5,000, as near as claimants can now state.

Claimants further say that during the progress of said work under said contracts the authorities of the District of Columbia having lawful charge of that matter directed and required the said Connolly and those executing the said work under him to furnish the materials for and do a large amount of work upon Fifth street which was not strictly under the above-named contracts, but connected with said work.

The said work and materials so ordered on Fifth street were done and furnished by the said Connolly and his subordinates in obedience to, and as required by, the said orders; and the said Connolly and his assigns, these claimants, became entitled to the price and value of said work and materials so done and furnished on Fifth street, which amounted, as near as claimants can now state, to the sum of $2,300.

Claimants can not state the exact amounts of the above-named claims, by reason of not having access to the books and papers where claimants believe the same can be accurately ascertained, being the books, records, and papers in the possession of the Commissioners of the District of Columbia.

That no assignment or transfer of the indebtedness aforesaid, or any part or item thereof, has been made by them, but each and every part thereof is due to them, as hereinbefore set forth.

That there is no just credit or set-off against the amounts hereinbefore set forth, or any part or item thereof, and that there is due to them on account of the said several sums the sum of $10,100, with interest

9 thereon, all of which is unpaid, and they pray that they may have judgment for the sum of $10,100, with interest on the several sums from the proper dates, when said dates shall be duly ascertained.

RAWLEIGH W. DOWNMAN,
*Address: Washington, D. C.*

SHELLABARGER & WILSON, *Attorneys,*
*Rooms 20, 22, 23, Corcoran Building, Washington, D. C.*

DISTRICT OF COLUMBIA,
*County of Washington, ss:*

Rawleigh W. Downman, being first duly sworn, on oath says that he is one of the claimants as to the matters set forth in the foregoing petition, and that he has fully read the said petition, and that the matters and things stated in said petition are true to the best of affiant's knowledge and belief.

RAWLEIGH W. DOWNMAN.

Subscribed and sworn to by the above-named Rawleigh W. Downman, in the said District, before me, Wm. T. S. Curtis, a notary public therein and therefor, duly commissioned and qualified.

Witness my hand and seal notarial, this 15th day of December, A. D. 1880.

[SEAL.]

WM. T. S. CURTIS,
*Notary Public, D. C.*

*Traverse*—Filed February 11, 1882.

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SEMONS,
*Asst. Attorney-General.*

10 *Order of consolidation.*

DECEMBER 14, 1885.

The motion to consolidate this case No. 280, D. C., with numbers 162 and 375, vs. District of Columbia, was allowed.

BY THE COURT.

APRIL 25, 1887.

On motion suggesting death of Rawleigh W. Downman, it was ordered that the suit be continued in the name of the surviving partner.

BY THE COURT.

*In the case of William M. Galt, No. 162, D. C.*

The claimant filed his original petition November 26, 1880, which is as follows:

11 WILLIAM M. GALT
*vs.*
DISTRICT OF COLUMBIA. } No. 162, D. C.

(Original petition filed Nov. 26, 1880.)

To the Honorable Justices of the Court of Claims:

The complainant, William M. Galt, respectfully represents:

1. That he is a resident of the District of Columbia and a citizen of the United States, and that he has at all times borne true allegiance to

the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the same.

2. That the defendant, the District of Columbia, is justly indebted unto him, after allowing all just credits and offsets, in the full sum of twenty-three hundred and twenty-seven dollars and ninety-one cents ($2,327.91), with interest thereon at the rate of six (6) per centum per annum from the 4th day of May, A. D. 1875, until paid, for this—

12 3. That heretofore, on or about the 24th day of April, A. D. 1872, a contract in writing was made and entered into by and between the said District of Columbia and one Daniel A. Connolly, whereby the said Connolly agreed to do the following work in the city of Washington for the use and benefit of the said District of Columbia: "Grade on Massachusetts avenue between Lincoln square and New Jersey avenue." This contract is known as No. 243.

4. That heretofore, on or about the 4th day of May, A. D. 1875, an extension, in writing, of the above contract was made and entered into by and between the said District of Columbia and the said Connolly, whereby the said Connolly agreed to do the following work in the city of Washington for the use and benefit of the said District: "An amount of grading on the following streets, equivalent to an amount relinquished on Massachusetts avenue between Lincoln square and New Jersey avenue, and the replacement of the old material, viz: B street, between 4th and Boundary streets, northeast; C street, between 4th and Boundary streets, northeast; A street, between 3d and Boundary streets, southeast; Deleware avenue, between C and Boundary streets; E street, between 2d street and N. J. avenue; First street, between C street north and Boundary street; D street, between 1st and Fourth streets, northeast; 6th street, between Massachusetts avenue and East Capitol street."

5. That on the 6th day of October, A. D. 1875, an extension, in writing, of the above contract was made and entered into by and between the said District of Columbia and the said Connolly, whereby the said Connolly agreed to do the following work in the city of Washington for the use and benefit of the said District: "Relay old material on Massachusetts avenue, between Lincoln square and New Jersey avenue."

13 6. That at various dates between the 4th day of May, 1875, when the extension described in paragraph No. 4 was made, and the 22d day of March, 1876, when the said contract and its extensions were cancelled, as hereinafter set forth, divers agreements for "extra work" were made and entered into by and between the said District of Columbia and the said Connolly, under which the said Connolly furnished material and did work for the use and benefit of said District in different places in the city of Washington, among others on 5th street, between D and H streets northeast.

7. That by the terms of the said extension of May 4th, 1875, and the said agreements or orders for "extra work" thereunder, it was contracted that the said Connolly was to receive for said work and materials compensation according to the rates and prices fixed by the board of public works of the said District for work of a similar character; and that payment for the same was to be made in the bonds of the said District issued by the sinking fund commissioners of the said District, under and by virtue of Section VII of the act of Congress entitled "An act for the Government of the District of Columbia and for other purposes," approved

June 20th, 1874, which said bonds were to be accepted by the said Connolly at their par value.

8. That the said Connolly well and faithfully executed and performed the work under the said contract No. 243, the extensions thereof, and agreements for extra work thereunder, according to the terms of the same, until the 5th day of February, 1876, at which date the further execution of the said work was suspended by order of the said District; that the said work was measured by engineer officers of the said District and was accepted by the same; that as the said work progressed, the said
14 measurements thereof being made by the said engineers from time to time, were presented to and duly approved and audited by the board of audit of the said District until the said board of audit was abolished, as hereinafter set forth; that the said board, until abolished, issued from time to time to the said Connolly "certificates" in payment of so much of the said work so measured and audited at the respective dates of the said certificates; that on the 14th day of March, 1876, the said board of audit was abolished, and no other provision of law was then or has since been made for the audit of such measurements as were left unaudited at that date, or as were subsequently made; that after the suspension of the said work by said order of date February 5th, 1876, final measurements were made by the engineer officers of the said District, at various dates, of all work done by the said Connolly under the said contract No. 243, extensions thereof and agreements for extra work thereunder; and that these "final measurements" showed that, after giving the District credit for all "certificates" of the said board of audit issued to the said Connolly as aforesaid, and allowing all offsets, there still remained due the said Connolly a balance of about ($2,327.91) twenty-three hundred and twenty-seven and $\frac{91}{100}$ dollars, which balance is still unpaid.

9. That on or about the 23d day of October, 1872, a contract, in writing, was made and entered into by and between the said District and one James W. Walsh, whereby the said Walsh agreed to do the following work in the city of Washington, for the use and benefit of the said District: "Grade Eleventh street between Pennsylvania avenue and H street northeast;" that on the 7th day of December, 1874, the said Walsh made an assignment of the said contract (which contract is known as No. 582) to one William Hussey, and the said District on the
15 same day ratified and accepted the same, and made and granted an extension of the said contract to the said Hussey, whereby the said Hussey agreed to complete the work called for by the said contract; that on the 8th day of April, 1875, a further extension, in writing, was made between the said District and the said Hussey, whereby the said Hussey agreed to do the following work in the city of Washington, for the use and benefit of the said District: "Grade an amount of grading equivalent to grading relinquished on Eleventh street, and reset curb and relay brick pavements where directed, viz, Tennessee avenue between Lincoln Square and 15th street east; Fifteenth street between H and East Capitol streets northeast; Fifth street between H and K streets northeast; Sixth street between H and K streets northeast; F street between New Jersey avenue and Seventh street northeast; Boundary street between First and Fifteenth streets east."

10. That on the 24th day of February, 1876, the said Daniel A. Connolly having done work and furnished material under the extension of

his contract No. 243, of date the 4th day of May, 1875, and agreements for extra work thereunder, on Fifth street between D and H streets northeast, applied to the engineer officers of the said District for measurement of the same; that in reply to such application, the said Connolly was informed by the said officers that the said work belonged under the extension, of date the 8th day of April, 1875, of contract No. 582 of the aforesaid William Hussey; that said Hussey had also applied for measurement of work done on the same street, but that the measurement would be made in the said Hussey's name and under the said contract No. 582, provided both the said Hussey and Connolly would give their assent, in writing, to that arrangement; that on the 21st day
25 of July, 1876, both the said Hussey and Connolly did so signify their assent to the same; that a measurement was thereupon made in the name of the said Hussey and under the said contract No. 582; that subsequently a measurement was also made in the name of the said Connolly, and the work credited to the said Connolly, under the extension, of date the 4th day of May, 1875, of his contract No. 243; and that both of the said measurements show a balance due and unpaid by the said District of twenty-three hundred and twenty-seven and $\frac{91}{100}$ dollars.

11. That on the 25th day of September, 1876, the said William Hussey, by an instrument in writing, and under seal, appointed one Thomas Joyce his attorney in fact to collect from and receipt for to the District of Columbia any money which was then or should thereafter become due him, the said Hussey, under his contract No. 582, and the several extensions thereof; that, at the time of the arrangements between the said Hussey, Connolly, and the District of Columbia, set out in the above paragraph, as to the work done by the said Connolly on 5th street between D and H streets northeast the said Hussey, by an instrument in writing and under seal, assigned to the said Connolly all his interest in the measurement of the said work, and appointed the said Connolly his attorney in fact for all purposes connected therewith; that on the same day the said Connolly, being justly indebted to the claimant Galt, made an assignment of all his interest in the said measurement to the said Galt, and constituted him his attorney in fact for all purposes connected therewith; and that on the same day the aforesaid Thomas Joyce executed, in proper form, a similar assignment and power of attorney to the said Galt, transferring to the said Galt all of his, the said Joyce's, interest in the said measurement, under the power of attorney from
17 Hussey to Joyce, of date the 25th day of September, 1875, made in connection with said Hussey's contract No. 582: Copies of these four powers of attorney and assignments are annexed hereto, marked respectively, "W. M. G. Exhibits A, B, C, and D."

12. That no other person, save this claimant, is in any manner interested in this claim.

Wherefore the claimant prays that he may have judgment against the District of Columbia for the sum of twenty-three hundred and twenty-seven dollars and ninety-one cents ($2,327.91), and interest thereon from the 4th day of May, 1875, at the rate of six per centum per annum until paid.

WILLIAM M. GALT.

WALTER S. PERRY,
*Claimant's Attorney, Washington, D. C.*

DISTRICT OF COLUMBIA, *City of Washington:*

I do solemnly swear that I have read the petition hereto annexed, and that I believe the matters and things set forth therein are true.

WILLIAM M. GALT.

Subscribed and sworn to by the above named William M. Galt, in the said District, before me, a justice of the peace therein, duly qualified and commissioned, this 30th day of April, A. D. 1881.

CHARLES WALTER, J. P. [SEAL.]

WALTER S. PERRY,
*Claimant's Attorney, Washington, D. C.*

18 "W. M. G. EXHIBIT A."

(Copy.)

*Power of attorney.*

Know all men by these presents, that I, William Hussey, of Washington, in the District of Columbia, for and in consideration as stipulated in the annexed agreement, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Thomas Joyce, of Washington, District of Columbia, my true and lawful attorney, for me, and in my name, place, and stead, to ask for, collect, receive, and give receipt for, any and all moneys, securities, certificates of indebtedness due and payable, or to become due and payable, to me for any and all work done for the District of Columbia by me under the provisions of contract No. 582 of the late board of public works, and all of its extensions, and such other additional work as may be hereafter awarded me under the provisions of said contract.

Giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present at the doing thereof, with full power of substitution and revocation; hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In testimony whereof, I have hereunto set my hand and seal, this 25th day of Sept., eighteen hundred and seventy-five.

(Sgd.) WILLIAM HUSSEY. [SEAL.]
[SEAL.]

Fifty cent stamp required.
Two witnesses required.

(Signed) { A. Y. LAKEMAN.
{ JOSEPH C. ROCK.

19 DISTRICT OF COLUMBIA,
*County of Washington, to wit:*

I, Charles S. Johnson, a notary public in and for the District and county aforesaid, do hereby certify that William Hussey, party to a certain power of attorney, bearing date on the 25th day of September, 1875, and hereto annexed, personally appeared before me in my office,

in the Dist. & county aforesaid, the said Wm. Hussey being personally well known to me as the person who executed said power of attorney, acknowledged the same to be his act and deed.

Given under my hand and official seal this 25th day of Sept., 1875.

[L. S.] (Signed) CHAS. S. JOHNSON, [NOTARIAL SEAL.]
*Notary Public.*

Five cent stamp required.

"W. M. G. EXHIBIT B."

(Copy.)

*Assignment.*

For a valuable consideration in hand paid by Daniel A. Connolly, of the city of Washington, in the District of Columbia, and received by me, I do hereby assign and transfer to the said Daniel A. Connolly and his assigns an interest to the extent and amomnt of twenty-three hundred and twenty-seven dollars ($2,327.00) in my claim against the District of Columbia, for monies due me for work and labor done by me for said District, under and by virtue of the terms of a certain contract between myself and said District, known as contract No. 582, to be collected and paid out of any monies due me under said contract, and I further authorize and empower the said Connolly to demand and receive the aforesaid sum of $2,327.00 from the District of Columbia and the authorized representatives thereof, the same to be by them deducted from the amount due me, and I further give and grant to the said Connolly full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises, as fully as I might or could do, with full power of substitution or assignment, and to receipt and sign all vouchers to the extent of the interest hereby assigned, hereby ratifying and confirming all that the said Connolly or his assigns may or shall lawfully do or cause to be done by virtue thereof.

In witness whereof I hereunto set my hand and seal this 31st day of July, 1876.

WILLIAM HUSSEY. [SEAL.]

Witness—
EDWIN FORREST.
WILLIAM BIRNEY.

DISTRICT OF COLUMBIA, *ss:*

Be it known, that on this 31st day of July, A. D. 1876, before me, the undersigned, a justice of the peace for the said District of Columbia, personally appeared William Hussey, described in, and who executed, the foregoing instrument of writing, and the same having been first fully read over to him and the contents thereof duly explained, acknowledged that he executed the same freely for the purposes therein stated, and I certify that the person who made the acknowledgement is personally known to me to be the individual described in and who executed the said instrument, and that I have no interest, present or prospective, in said claim.

WILLIAM HUSSEY.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Washington City, in said District, the day and year first above written, and the said William Hussey has subscribed his name to the above in my presence.

L. J. O'NEAL, *Justice of the Peace.* [SEAL.]

21 "W. M. G. EXHIBIT C."

(Copy.)

*Assignment.*

For a valuable consideration in hand paid by William M. Galt, of the city of Washington, in the District of Columbia, and received by me, I do hereby assign and transfer to the said William M. Galt and his assigns all my right, title, and interest acquired by virtue of a certain transfer or assignment heretofore made to me by one William Hussey, and dated the 31st day of July, A. D. 1876, in and to a certain claim heretofore presented against the District of Columbia by the said William Hussey, for monies due him for work and labor by him performed for said District, under and by virtue of a certain contract between the said William Hussey and the District of Columbia, known as contract No. 582.

The extent and the amount of the interest in said claim transferred by said William Hussey to me by said assignment is twenty-three hundred and twenty-seven dollars ($2327.00), and I do hereby authorize and empower the said William M. Galt to demand and receive the aforesaid sum of $2,327.00 from the District of Columbia and the authorized representatives thereof, the same to be by them paid out of and deducted from any monies due me under said contract by virtue of said assignment or otherwise.

And I further give and grant to the said William M. Galt full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises, as fully as I might or could do, with full power of assignment or substitution, and to receipt and sign all vouchers to the extent of the said interest hereby
22 assigned; hereby confirming all that the said William M. Galt or his assigns may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof I hereunto set my hand and seal this 31st day of July, A. D. 1676.

DANIEL A. CONNOLLY. [SEAL.]

Witness—
EDWIN FORREST.
WILLIAM BIRNEY.

DISTRICT OF COLUMBIA, *ss:*

Be it known that on this 31st day of July, A. D. 1876, before me, the undersigned, a justice of the peace for the said District of Columbia, personally appeared Daniel A. Connolly, described in, and who executed the foregoing instrument of writing, and the same having been first fully read over to him and the contents thereof duly explained, acknowledged

that he executed the same freely for the purposes therein stated, and I certify that the person who made the acknowledgement is personally known to me to be the individual described in and who executed the said instrument, and that I have no interest, present or prospective, in said claim or assignment.

DANIEL A. CONNOLLY.

In testimony whereof I have hereunto set my hand and affixed my official seal at Washington city, in said District, the day and year first above written, and the said Daniel A. Connolly has subscribed his name to the above in my presence.

L. J. O'NEAL, [SEAL.]
*Justice of the Peace.*

23 "W. M. G. EXHIBIT D."

(Copy.)

Whereas William Hussey, of Washington city, D. C., has heretofore, and on the 25th day of Sept., 1875, authorized Thomas Joyce, by power of attorney, heretofore duly filed with the board of audit, to receive and receipt for all monies due and owing to the said William Hussey, under contract No. 582, made by the late board of public works with James W. Walsh, and assigned by him to said Hussey, and under the extensions of the said contract, which power of attorney was coupled with an interest and irrevocable; and

Whereas the said Hussey was indebted to Daniel A. Connolly in the sum of twenty-three hundred and twenty-seven dollars ($2327) for work done by said Daniel A. Connolly, as contractor, on Fifth street between D and H streets, northeast, in the city of Washington, which work has been measured under contract No. 582 by the engineer of the District, but has not been paid for, and the said Hussey desires to secure said Connolly, his assignee, William M. Galt, the amount due and owing, as aforesaid, to said Daniel A. Connolly, as subcontractor, and the said Thomas Joyce has no claim on said proceeds of contract No. 582, except subject to the deduction of said sum of $2,327 due said Connolly:

Now, therefore, at the request of said Hussey and Daniel A. Connolly, and by virtue of the power of attorney from said Hussey to me, as aforesaid, and of the power of substitution in said power of attorney,

Know all men by these presents, that I, Thomas Joyce, by virtue of the power of substitution aforesaid, of Washington city,
24 in the District of Columbia, have made, constituted, appointed, and substituted, and by these presents do make, constitute, appoint, and substitute William M. Galt to be the true and lawful attorney of said William Hussey, irrevocable, for said Hussey, and in his name, place, and stead, hereby annulling and revoking all former powers of attorney or authorization inconsistent therewith, to collect from and receipt for to the District of Columbia, the sum of twenty-three hundred and twenty-seven dolllars ($2327), being the amount due by said William Hussey, contractor, holding contract No. 582, to Daniel A. Connolly, subcontractor, for work done on Fifth street between D and H streets, northeast, Washington city, and which amount has been assigned by said Connolly to said William M. Galt for a valuable consideration,

and to, from time to time, furnish any further evidence necessary, or that may be demanded, giving and granting to the said attorney full power and authority to do and perform in my name all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and in the name of said Hussey, or in my name, to receipt and sign all vouchers, and endorse, transfer, and sell all certificates, orders, and warrants; hereby ratifying and confirming all that the said attorney or his substitute may or shall lawfully do, or cause to be done, by virtue hereof, in the name of said Hussey, or in my name as attorney to said Hussey.

In witness whereof I hereunto set my hand and seal this thirty-first day of Jan'y, eighteen hundred and seventy-six.

(Signed) THOMAS JOYCE. [SEAL.]

Witness—
EDWIN FORREST.
WILLIAM BIRNEY.

25 ACKNOWLEDGMENT BY A PERSON KNOWN TO THE OFFICER.

DISTRICT OF COLUMBIA, *ss:*

Be it known that on this thirty-first day of July, A. D. 1876, before me, the undersigned, a justice of the peace for the said District of Columbia, personally appeared Thomas Joyce, described in, and who executed, the foregoing instrument in writing, and the same having been first fully read over to him, and the contents thereof duly explained, acknowledged that he executed the same freely for the purposes therein stated; and I certify that the person who made the acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument, and that I have no interest, present or prospective, in said claim.

(Signature.) THOMAS JOYCE (maker).

In testimony whereof the party acknowledging has subscribed his name (or made his mark) to the above in my presence, and I have hereunto set my hand and affixed my seal of office, at Washington City, in said District, the day and year first above written.

[SEAL.] L. J. O'NEAL, [SEAL.]
*Justice of the Peace.*

26 Traverse—Filed June 15, 1881.

WILLIAM M. GALT
*v.*
DISTRICT OF COLUMBIA. } No. 162.

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SIMONS,
*Asst. Atty. General.*

*Orders of consolidation.*

MARCH 5, 1883.

WILLIAM M. GALT
*vs.*
DISTRICT OF COLUMBIA. } No. 162.

SAMUEL J. RITCHIE, PARAGRAPH 10,
*vs.*
DISTRICT OF COLUMBIA. } No. 150.

DOWNMAN AND GREEN
*vs.*
DISTRICT OF COLUMBIA. } No. 280.

Ordered that the motion of the defendant to consolidate these cases be allowed.

BY THE COURT.

DECEMBER 14, 1885.

Ordered that the motion to consolidate No. 375, D. C., with Nos. 162 and 280, D. C., be allowed.

BY THE COURT.

27 *In the case of Samuel J. Ritchie, No. 150, D. C.*

The claimant filed his original petition November 20, 1880, of which paragraphs I, X, and XX are as follows:

*To the Honorable the Court of Claims:*

The claimant, Samuel J. Ritchie, respectfully represents:

I.

That he is a citizen of the State of Ohio.

X.

That heretofore, to wit, on the day of , A. D. , the board of public works for the said District entered into contracts, Nos. 243 and 1028, with one D. A. Connolly.

By said contract, No. 243, the parties thereto agreed that said
28 Connolly should grade Massachusetts avenue between Lincoln square and New Jersey avenue, and on B, C, A, E, D, and Sixth streets and Delaware avenue, and to relay old material on Massachusetts avenue, as in said contracts and extensions more particularly set forth, and should be paid therefor as therein set forth.

And by contract 1028 the parties thereto agreed that said Connolly should grade G street between Second and Fifth streets, and Second street between Maryland avenue and D street, which was extended by the Commissioners to reset curbs and relay brick pavement on G street between

Second and Fifth streets northeast, and should be paid therefor as in said contract and extension set forth.

That the said Connolly fully performed the said contracts, and there is a balance due on account thereof of $7,050.

That the said D. A. Connolly executed to Downman & Green a power of attorney, fully authorizing and empowering them to collect, sell, and assign the amount so due, as aforesaid, with full power of substitution; and afterwards, to wit, on the 11th day of February, 1878, the said Downman & Green, being so empowered as aforesaid, sold and assigned the said amount so due, as aforesaid, to the claimant, and executed to him full power of attorney to collect the said amount on his own account, and the said sum yet remains due and is wholly unpaid.

## XX.

And claimant further shows to the court that the contracts,
29 assignments, powers of attorney, statements of account, hereinbefore referred to, are in possession of the said defendant, excepting the assignments and powers of attorney by the said Betts, Gleason, and Whitney, and by reason thereof he is unable to give dates and amounts and terms of contract more specifically or with greater particularity than is hereinbefore set forth.

And he further shows to the court that the said several amounts hereinbefore named and set forth have been stated by the said defendant as being the balances respectively due on account of the contracts for work, labor, and materials hereinbefore referred to, and that the same appear by the books and papers of the said defendant, as claimant is informed and verily believes.

That no assignment or transfer of the indebtedness aforesaid, or any part or item thereof, has been made by him, but each and every part thereof is due to him as hereinbefore set forth. And claimant further avers that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States, and he believes the facts as stated in said petition to be true.

That there is no just credit, or set-off, against the amounts hereinbefore set forth, or any part or item thereof, and that there is due to him on account of the said several sums the sum of $35,583.91, all of which is unpaid.

30 He further shows to the court that by reason of not having access to the said books, contracts, and papers, he is unable to state definitely the date from which he is entitled to interest on the said several sums, and he prays that he may have judgment for the said sum of $35,583.91, with interest on the several sums from the proper dates when said dates shall be duly ascertained.

(Signed) SAMUEL J. RITCHIE.

SHELLABARGER & WILSON,
*Attorneys.*
(Rooms 20, 22, 23, Corcoran Building, Washington, D. C.)

DISTRICT OF COLUMBIA, *County of Washington, ss:*

Samuel J. Ritchie, on oath, says that he is the claimant as to the matters set forth in the foregoing petition, and that he has fully read the said petition, and that the matters and things stated in said petition are true, to the best of affiant's knowledge and belief.

SAMUEL J. RITCHIE.

Subscribed and sworn to by the above-named Samuel J. Ritchie, in the said District, before me, William T. S. Curtis, a notary public therein and therefor, duly commissioned and qualified.

31 Witness my hand and notarial seal the twentieth day of November, A. D. 1880.

[SEAL.]

WM. T. S. CURTIS,
*Notary Public, D. C.*

*Traverse.*—Filed December 10, 1880.

SAMUEL J. RITCHIE
*v.*
DISTRICT OF COLUMBIA. } No. 150.

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

THOMAS SIMONS,
*Asst. Atty. General.*

*Order of consolidation.*

D. A. CONNOLLY, TO THE USE, &C.,
*vs.*
DISTRICT OF COLUMBIA. } No. 162.

SAMUEL J. RITCHIE (PARAGRAPH 10)
*vs.*
DISTRICT OF COLUMBIA. } No. 150.

DOWNMAN AND GREEN
*vs.*
DISTRICT OF COLUMBIA. } No. 280.

Ordered, that the motion on behalf of defendant to consolidate these cases be allowed.

BY THE COURT.

MARCH 5, 1883.

32 OCTOBER 31, 1887.

*Opinion.*

SCOFIELD, J., delivered the opinion of the court:

Daniel A. Connolly, in his lifetime, had a large number of written contracts with the District of Columbia for the improvement of the streets of Washington. His administrator brings this suit to recover alleged balances due on eleven of these contracts, with their so-called extensions.

In the three other suits, consolidated and tried with this one, the claims are based upon assignments from Connolly of portions of such balances.

The claims of Elsin, administrator of Connolly, as set forth in his petition, may be tabulated as follows:

| Number of contract. | Date. | Balance claimed. |
|---|---|---|
| 209 | Jan. 2, 1872 | $199.92 |
| 231 | Apr. 18, 1872 | 1.73 |
| 1035 | Mar. 5, 1874 | 42.53 |
| 243 and extensions | Apr. 24, 1872 | 9,349.95 |
| 349 | June 24, 1872 | 785.56 |
| 595 | Nov. 12, 1872 | 66.65 |
| 1057½ | Apr. 8, 1872 | |
| 665 | Apr. 22, 1873 | 556.25 |
| 690 | May 20, 1872 | 30.49 |
| 828 | Aug. 8, 1874 | 300.04 |
| 1028 | Jan. 20, 1874 | 1,945.09 |
| Total claimed | | 13,278.21 |

33 The balances claimed upon contracts Nos. 209, 231, and 1035 are admitted to be due, and amount to $244.18. The balance claimed on contract No. 828 is found to have been paid. These four contracts, therefore, are taken out of controversy.

The original contract, No. 243, stipulates that the price of grading shall be 30 cents a cubic yard, including 200 feet of "haul," and all hauling beyond that, 1 cent for every 200 feet. As the work progressed, partial measurements and payments were made from time to time at these rates. Subsequently, beginning with December 5, 1873, are four partial measurements, on which the extra haul was reckoned at 1¼ cents for every 100 feet. This change in reckoning makes a difference in favor of the claimant of $8,413.55. The computation was made by the District auditor or engineer, and the three last payments made through the board of audit.

The change in the rate of payment was doubtless made in pursuance of two orders by the board of public works, as follows:

July 15, 1873. Auditor was notified that the price for hauling earth has been established at 1¼ cents per cubic yard for every 100 feet of haul over first 200 feet, since June 1, 1873. Contract clerk so notified.

September 27, 1873. J. C. Lay, auditor, was notified that in settlements of accounts for extra haul, that one and one-quarter cents per cubic yard for each additional 100 feet beyond the first 200 feet for all work done since January 1, 1873, will be allowed.

These orders came to be called board rates.

Did these orders to the auditor authorize the claimant legally to demand or bind the District to pay more than the written contract provided for?

34 This question has been so fully discussed in the recent opinion of the Chief Justice in the case of Barnes v. The District of Columbia (22 Ct. Cls.) that it is unnecessary to go over the ground again. We held in these cases, as we held there, that these orders do not change the written contracts between the parties made before the orders were issued, and much less contracts made thereafter.

These higher rates having been allowed and paid by the board of audit, can the District recover back the excess? That question is also decided in the Barnes case in favor of the District. The question, however, does not properly arise under this particular contract. The work has never been fully settled. All payments made were only partial payments. In any event, there is still a balance due the claimant. The question rather is, whether when in a final settlement the District shall be credited with all money actually paid? That it should be so credited we have no doubt.

The same questions arise under contracts Nos. 349, 595, 1057½, 665, and 1028, and must be ruled in the same way.

Additional questions are presented in some of these cases.

On the same voucher some grading is computed at 30 cents and some at 40 cents; some of the extra haul at the contract rate and some at board rates. This fact, coupled with the fact that the District was not able to cash the auditor's certificates, is enough, the claimant argues, to support a legal presumption that part of the grading was on old
35 graveled streets, and part of the haul was outside the contract. All the other surrounding facts seem to be adverse to such a presumption. No mention or reference is made of grading on old graveled streets or of work done outside the contract, either in the measurements, computations, or receipts. All are stated as if done under the contract. Even if it could be assumed that part of the grading was done on old graveled streets, it is not at all certain that the claimant would be entitled to recover 40 cents a cubic yard.

It is true that in September, 1871, the board prescribed the rate of grading old graveled streets to the depth of 2 feet to be 40 cents a cubic yard, but at the same time they prescribed the rate of other grading at 20 cents. In January following they revised the price list and established the average rate grading at 30 cents, without exception or mention of graveled streets. This contract was made in the following June. In contract No. 1028, below, the clause which fixes the price of grading and haul are these words:

"Grading of old graveled streets for first per cubic yard cents." The contract is drawn on a printed blank. No effect can be given to the words quoted. If any reference were to be drawn from them, it would be that no grading on graveled streets was in contemplation. There is no evidence, unless presumed from the amount paid, that any was done.

Contract No. 690 provided for certain work to be done across two blocks on First street east. The work was done, and a similar kind of work was done at the same time across three additional and adjoin-
36 ing blocks. (Finding IX.) The haul on the whole five blocks was reckoned at board rates. So far as the extra work was concerned, that was right, but the work on the two blocks named in the contract, according to the foregoing ruling, we have reckoned according to the terms therein prescribed.

Applying these rules to the facts as found, the following results appear:

| | |
|---|---|
| On contracts No. 209, 231, and 1035 there is due Connolly.. | $244.18 |
| On contract No. 243 and extensions, with the Hussey assignment | 936.40 |
| On contract No. 349 | 2.51 |
| On contract No. 1028 | 1,645.09 |
| Total | 2,828.18 |

| | |
|---|---|
| Overpayments to Connolly on— | |
| Contracts Nos. 595 and 1057, made January 27, 1875 | $173.35 |
| Contract No. 665, made February 9, 1875 | 1,012.37 |
| Contract No. 690, made December 31, 1873 | 2,300.51 |
| Total | 3,486.23 |

Leaving a balance in favor of the District of $658.05.

The additional counterclaim consists of overpayments on contracts No. 447, 527, and 693, made, not to the claimant, but to Albert Gleason, assignee. The assignment does not specify any particular amounts assigned, but only all claims that may be allowed by the board of audit.

37 It does not appear that Connolly ever received the money or derived any benefit therefrom. We do not see upon what principle an assignor is chargeable with overpayments which he neither authorized nor received. (United States v. Jones, 8 Pet., 387.)

The counterclaim must be dismissed.

By a careful comparison of the dates of the papers under which the rights of the claimants in cases Nos. 150, 162, and 280 originated, with the dates of the overpayments, it appears that Connolly during all that time was indebted to the District. It is true that upon a settlement of some of the assigned contracts balances are now found to have been due to Connolly, but these balances could not be assigned so as to escape the set-off of balances then existing on other contracts in favor of the District.

In the cases Nos. 150, 162, and 280 the petitions are dismissed, and in No. 375 judgment will be entered in favor of the defendant in the sum of $658.05.

38 *Judgments entered October 31, 1887.*

At a Court of Claims held in the city of Washington, on the 31st day of October, 1887, judgment was ordered to be entered in the following cases, to wit:

COLUMBUS J. ESLIN, ADMR. OF DANIEL A. Connolly, dec'd, *vs.* DISTRICT OF COLUMBIA. } No. 375.

The court on due consideration of the premises, both for and against the District of Columbia and the claimant, upon the petition of the claimant and the counter claim of the defendant, finds upon the whole case that the claimant is indebted to the defendant in the sum of six hundred and fifty-eight dollars and five cents, and do order, adjudge,

and decree that the defendant, the District of Columbia, do have and recover of and from the said Columbus J. Eslin, as administrator of Daniel A. Connolly, deceased, the sum of six hundred and fifty-eight dollars and five cents ($658\frac{05}{100}$).

BY THE COURT.

OSCEOLA C. GREEN, SURVIVING PARTNER OF Downman and Green,
*vs.*
THE DISTRICT OF COLUMBIA. } No. 280.

The court on due consideration of the premises find for the defendant and do order, adjudge, and decree that the claimant's petition be dismissed.

BY THE COURT.

Oct. 31, 1887.

39 WILLIAM M. GALT
*vs.*
THE DISTRICT OF COLUMBIA. } No. 162.

The court on due consideration of the premises find for the defendant and do order, adjudge, and decree that the claimant's petition be dismissed.

BY THE COURT.

October 31, 1887.

SAMUEL J. RITCHIE
*vs.*
THE DISTRICT OF COLUMBIA. } No. 150.

The court on due consideration of the premises find for the defendant and do order, adjudge, and decree that the claimant's petition be dismissed.

BY THE COURT.

October 31, 1887.

40 In the Court of Claims. December term, 1887.

DOWNMAN & GREEN
*v.*
THE DIST. OF COL. } No. 280.

SAMUEL J. RITCHIE,
*v.*
THE DIST. OF COL. } No. 150.

*Motion of claimants for new trial.*—Filed November 18, 1887.

Now come the claimants, Downman & Green and Samuel J. Ritchie, and move the court to set aside the judgement entered in these causes on the 31st of Oct., 1887, dismissing the petitions and grant new trials, and in support of this motion assign the following grounds:

1. Error in finding an overpayment of two thousand eight hundred and fifty dollars and fifty-two cents ($2,850.52) under contract No. 243, in

finding 4, when the set-off of that amount was not claimed by the District of Columbia in any of the set-offs filed by them until after the case has gone to trial, and when there was no opportunity whatever to reply to the set-offs so claimed.

2. Error in all the remaining items of set-off allowed under the head of said contract No. 243, because the court specifically finds as fact that said items of work were all done after the suspension and resumption of work under said contract No. 243, and that two of the same were done after the date of extension of said contract 243, which extension in terms provided for board rates, and that therefore said board rates were not in conflict with or excessive of contract rates, but were actually contract rates.

3. Error of fact in this: That in the 9th of fact this court found as a matter of fact that 11,100 cubic yards of grading was done on two
41 blocks named in contract No. 690, and that 32,193 in said contract No. 690, whereas, in fact, the evidence shows that a certain amount of grading was done on said five blocks, but fails to show in any manner how much grading was done on the two blocks covered by said contract, and how much on the three blocks not covered by said contract, and there is no evidence on that point in the record.

4. Because the court erroneously credited the District of Columbia with two thousand three hundred dollars and fifty-one cents ($2,300.51), alleged overpayment on said contract 690, whereas the evidence shows no overpayment whatever on said contract.

5. Error of law in giving the District of Columbia the benefit of all the payments made by the board of public works, or the auditor of the District of Columbia, as if the same had been made in cash, whereas the evidence shows, and it should have been so found by the court, that all payments were made in depreciated certificates not worth over fifty cents on the dollar, and credit should therefore have been given for them at no greater rate.

6. Error of fact in this: That the court failed to find as a fact that all the work done under the Commissioners of the District of Columbia was done at board rates, and that from 1874 to 1876 said Commissioners paid such board rates for said work, and that all resumptions of contracts under said Commissioners were made with the understanding and agreement that board rates should be paid.

7. Error of fact in this: That in the 15th finding it is stated that it did not appear, except by the testimony of Green, taken after the death of Connolly, that their advances exceeded receipts in the sum of $8,700, whereas, in fact, it did so appear (in addition to Green's testimony) by an
anthenticated record from the S. C. of the District (see auditor's
42 report S. C. D. C., in case No. ——), and referred in 7th request in Ritchie's case.

8. Because of other errors of fact and law, which will be specified and set forth more fully and particularly on the argument of this motion.

9. Upon the ground of newly discovered evidence.

10. Error of law in that the defendant was allowed, after the case was called for trial (and an application by the claimants after for a continuance thereupon), to file and largely increased counterclaims, and the claimant forced to immediate trial upon the issues that instantaneously made up. See clerk's record.

11. And the claimants furthermore to be allowed to file additional detailed requests for findings and causes for new trial before the motion above is fully disposed of.

(Indorsed:) No. 280 & 150. Downman & Green vs. Dist. of Col. (Ritchie.) Motion for new trial & add'l findings. D. & S. & W.

43 COLUMBUS J. ESLIN, ADMR., *vs.* THE DISTRICT OF COLUMBIA. } No. 375. Consolidated with Nos. 150 (Par. X), 162, and 280.

*Motion for new trial.*—Filed November 19, 1887.

Now comes the claimant, Columbus J. Eslin, administrator, and moves the court to set aside the judgment entered in this cause on the 31st of October, 1887, dismissing the petition, and grant a new trial, and in support of this motion assigns the following grounds:

1. Error in finding an overpayment of two thousand eight hundred and fifty dollars and fifty-two cents ($2,850.52) under contract No. 243, in Finding 4, when the set-off of that amount was not claimed by the District of Columbia in any of the set-offs filed by it until after the case had gone to trial, and when there was no opportunity whatever to reply to the set-offs so claimed, and because the amount of $39,175.36, of which said item formed a part, was paid to David A. Connolly by the District of Columbia and received by him in full settlement and satisfaction of a disputed claim which had been the subject of controversy.

2. Error of fact in this: That in the fourth finding of fact, the court found that the said sum of two thousand eight hundred and fifty dollars and fifty-two cents ($2,850.52) was paid through the board of audit, whereas the payment was made through the board of public works in December, 1873, before the existence of said board of audit.

3. Error in all the remaining items of set-off allowed under the head of said contract No. 243, because the court specifically finds as a fact that said items of work were all done after the suspension and resumption of work under said contract No. 243, and that two of the same were done after the day of extension of said contract No. 243, which extension in terms provided for board rates, and that therefore said board rates were not in conflict with or excessive of contract rates, but were actually contract rates.

4. Error of fact in this: That in the ninth finding of fact this court found as a matter of fact that eleven thousand one hundred (11,100) cubic yards of grading were done on two blocks named in contract No. 690, and that thirty-two thousand one hundred and ninety-three (32,193) cubic yards of grading were done on three other blocks not mentioned in said contract No. 690, whereas, in fact, the evidence only shows that a certain amount of grading was done on said five blocks, but fails to show in any manner how much grading was done on the two blocks covered by said contract, and how much on the three blocks not covered by said contract, and there is no evidence on that point in the record.

5. Because the court erroneously credited the District of Columbia with two thousand three hundred dollars and fifty-one cents ($2,300.51) alleged overpayment on said contract No. 690, whereas the evidence shows no overpayment whatever on said contract.

6. Error of law in giving the District of Columbia the benefit of all the payments made by the board of public works or the auditor of the District of Columbia as if the same had been made in cash, whereas the evidence shows, and it should have been so found by the court,
44 that all the payments were made in depreciated certificates not worth over fifty cents on the dollar, and credit should therefore have been given for them at no greater rate.

7. Error of fact in this: That the court failed to find as a fact, that all the work done under the Commissioners of the District of Columbia was done at board rates, and that from 1874 to 1876 said Commissioners paid such board rates for said work, and that all resumptions of contracts under said Commissioners were made with the understanding and agreement that board rates should be paid.

8. Error of fact in this: That the court found that the alleged overpayments were made to Connolly, whereas it appears by the evidence that they were in great part made to one J. C. Lay, signing himself as attorney for Daniel A. Connolly, and there is no evidence to show that Lay was Connolly's attorney, or that Connolly ever received the benefit of any of said overpayments.

9. Error of fact in this: That the court found (finding IX) that Connolly agreed to do certain work on First street east, between East Capitol street and B street north, under contract 690, whereas it appears that the contract clerk had been directed on August 25, 1873, to cancel so much of said contract as relates to said street. (See original letter in the files, of which an imperfect copy omitting the word "cancel" is printed on page 73 of the Galt record.)

10. Error of fact in this: That the court found the following as fact: "But by the testimony of Green, taken after the death of Connolly, it appears that Downman & Green made advances amounting in all to upwards of $58,000, and that in February, 1876, their advances exceeded receipts in the sum of about $8,700."
45 Whereas the evidence of Green is merely that "to the best of his recollection" it was $8,700, and he admits that there was a dispute about it, while Connolly in his revocations claims that nothing whatever is due, and no books or other papers were produced to show the fact claimed, and for these reasons no finding on the subject is warranted by the evidence.

11. Error of law in this: That the court has found as facts certain instruments set forth in finding XV (the first, third, and fourth instruments) when these have not been proved by the attesting witnesses.

12. Error of fact in this: That the court found the instruments aforesaid in an incomplete state, viz, without the names of the attesting witnesses.

13. Surprise in this: That the defendant, prior to the day of trial, filed exceptions to the referee's report, but no plea of counter-claim or set-off, and no opportunity was given to this claimant to file a replication, although he is able fully to file a valid replication, to wit, that of no assets in his possession as administrator; by reason whereof this claimant has suffered in that a judgment has been rendered against him for six hundred and fifty-eight dollars and five cents ($658.05).

14. Error of law in this: That the judgement of this court has been entered that defendant have judgment for the sum of six hundred and

fifty-eight dollars and five cents ($658.05) against Columbus J. Eslin, as administrator of Daniel A. Connolly; whereas judgment should have been rendered against Columbus J. Eslin, administrator of Daniel A. Connolly, *de bonis testatoris.*

15. Because of other errors of law and fact which will be specified and set forth more fully and particularly on the argument of this motion.

16. Upon the ground of newly discovered evidence.

CHARLES & WILLIAM B. KING,
*Attorneys for Claimant.*

46 WILLIAM M. GALT *vs.* THE DISTRICT OF COLUMBIA. } No's. 162, 375. Consolidated with Nos. 150 (Par. X) and 280.

*Motion for new trial.*—Filed November 19, 1887.

Now comes the claimant, William M. Galt, and moves the court to set aside the judgment entered in this cause on the 31st of October, 1887, dismissing the petition, and grant a new trial, and in support of this motion assigns the following grounds:

1. Error in finding an overpayment of two thousand eight hundred and fifty dollars and fifty-two cents ($2,850.52) under contract No. 243, in Finding 4, when the set-off of that amount was not claimed by the District of Columbia in any of the set-offs filed by it until after the case had gone to trial, and when there was no opportunity whatever to reply to the set-offs so claimed, and because the amount of $39,175.36, of which said item formed a part, was paid to David A. Connolly by the District of Columbia and received by him in full settlement and satisfaction of a disputed claim which had been the subject of controversy.

2. Error of fact in this: That in the fourth finding of fact the court found that the said sum of two thousand eight hundred and fifty dollars and fifty-two cents ($2,850.52) was paid through the board of audit, whereas the payment was made through the board of public works in December, 1873, before the existence of said board of audit.

3. Error in all the remaining items of set-off allowed under the head of said contract No. 243, because the court specifically finds as a fact that said items of work were all done after the suspension and resumption of work under said contract No. 243, and that two of the same were done after the day of extension of said contract No. 243, which extension, in terms, provided for board rates, and that therefore said board rates were not in conflict with or excessive of contract rates, but were actually contract rates.

4. Error of fact, in this: That in the ninth finding of fact this court found as a matter of fact that eleven thousand one hundred (11,100) cubic yards of grading were done on two blocks named in contract No. 690, and that thirty-two thousand one hundred and ninety-three (32,193) cubic yards of grading were done on three other blocks not mentioned in said contract No. 690, whereas, in fact, the evidence only shows that a certain amount of grading was done on said five blocks, but fails to show in any manner how much grading was done on the two blocks covered by said contract, and how much on the three blocks not covered by said contract, and there is no evidence on that point in the record.

5. Because the court erroneously credited the District of Columbia with two thousand three hundred dollars and fifty-one cents ($2,300.51) alleged overpayment on said contract No. 690, whereas the evidence shows no overpayment whatever on said contract.

6. Error of law in giving the District of Columbia the benefit of all the payments made by the board of public works or the Auditor of the District of Columbia as if the same had been made in cash, whereas the evidence shows, and it should have been so found by the court,
47 that all the payments were made in depreciated certificates not worth over fifty cents on the dollar, and credit should therefore have been given for them at no greater rate.

7. Error of fact, in this: That the court failed to find as a fact that all the work done under the Commissioners of the District of Columbia was done at board rates, and that from 1874 to 1876 said Commissioners paid board rates for said work, and that all resumptions of contracts under said commissioners were made with the understanding and agreement that board rates should be paid.

8. Error of fact, in this: That the court found that the alleged overpayments were made to Connolly, whereas it appears by the evidence that they were in great part made to one J. C. Lay, signing himself as attorney for Daniel A. Connolly, and there is no evidence to show that Lay was Connolly's attorney, or that Connolly ever received the benefit of any of said overpayments.

9. Error of fact, in this: That the court found (Finding IX) that Connolly agreed to do certain work on First street east, between East Capitol street and B street north, under contract 690, whereas it appears that the contract clerk had been directed on August 25, 1873, to cancel so much of said contract as relates to said street. (See original letter in the files, of which an imperfect copy omitting the word "cancel" is printed on page 73 of the Galt record.)

10. Error of fact, in this: That the court found the following as fact: "But by the testimony of Green, taken after the death of Connolly, it appears that Downman & Green made advances amounting in all to upwards of $58,000, and that in February, 1876, their advances exceeded receipts in the sum of about $8,700."
48 whereas the evidence of Green is merely that "to the best of his recollection" it was $8,700, and he admits that there was a dispute about it, while Connolly in his revocations claims that nothing whatever is due, and no books or other papers were produced to show the fact claimed, and for these reasons no finding on the subject is warranted by the evidence.

11. Error of law, in this: That the court has found as facts certain instruments set forth in finding XV (the first, third, and fourth instruments) when these have not been proved by the attesting witnesses.

12. Error of fact, in this: That the court found the instruments aforesaid in an incomplete state, viz, without the names of the attesting witnesses.

13. Surprise, in this: That the defendant, prior to the day of trial, filed exceptions to the referee's report, but no plea of counterclaim or set-off, and no opportunity was given to this claimant to file a replication, although he is able fully to file a valid replication, to wit: That of

no assets in his possession as administrator; by reason whereof this claimant has suffered, in that a judgment has been rendered against him for six hundred and fifty-eight dollars and five cents ($658.05).

14. Because of other errors of law and fact which will be specified and set forth more fully and particularly on the argument of this motion.

15. Upon the ground of newly discovered evidence.

GEORGE A. KING,
*Attorney for Claimant.*

49 *In No. 162, D. C.*

On motion suggesting death *death* of William M. Galt, and to substitute his executrix, it was ordered that this suit be revived in the name of Harriet T. Galt, executrix of William M. Galt, deceased.

BY THE COURT.

November 7, 1889.

*Order allowing motions for new trial.*

NOVEMBER 13, 1893.

| | |
|---|---|
| COLUMBUS J. ESLIN, ADMR. OF DANIEL A. Connolly, dec'd, *vs.* DISTRICT OF COLUMBIA. | No. 375. |
| OSCEOLA C. GREEN, SURVIVING PARTNER of Downman and Greene, *vs.* DISTRICT OF COLUMBIA. | No. 280. |
| HARRIET T. GALT, EXECUTRIX OF William M. Galt, dec'd, *v.* DISTRICT OF COLUMBIA. | No. 162. |
| SAMUEL J. RITCHIE *v.* DISTRICT OF COLUMBIA. | No. 150. |

Ordered, That the motions of the claimants for new trials in these cases be allowed under the terms of an order of the court this day filed, which order provides: "As to the allegations made by way of counter-claim the affirmative is upon the defendants. Leave is given both parties to take further testimony, which shall be closed January 31, and the cases shall be put upon the February trial calendar."

BY THE COURT.

Nov. 13, 1893.

50 COLUMBUS J. ESLIN, ADMINISTRATOR OF Daniel A. Connolly, deceased, v. THE DISTRICT OF COLUMBIA. } 375.

OSCEOLA C. GREEN, SURVIVING PARTNER OF Downman & Green, v. THE DISTRICT OF COLUMBIA. } 280.

HARRIET T. GALT, EXRX. OF WILLIAM M. GALT, v. THE DISTRICT OF COLUMBIA. } 162.

SAMUEL J. RITCHIE v. THE DISTRICT OF COLUMBIA. } 150.

(Decided May 28, 1894.)

*Findings of fact and opinion by Judge Davis.*

These cases having been consolidated and heard together, the court, from the evidence, find the facts to be as follows:

I.

During the years 1872, 1873, 1874, and 1875 Daniel A. Connolly had a large number of written contracts with the District of Columbia for the improvement of the streets of Washington, made and signed as required by the act of February 21, 1871, chapter 62, section 537 (16 Stat. L., 427). His administrator now sues to recover balances alleged to be due on eleven of these contracts, with their extensions.

The claims in the other three above-entitled cases are based upon assignments from said Connolly.

II.

There is no controversy about contracts Nos. 209, 231, and 1035. It is admitted, and the court so finds, that the amounts claimed are due thereon—in all, $244.18.

On contracts Nos. 209 and 231 the last payments were made April 7, 1873, and on No. 1035, August 1, 1874. None of the work was done after these respective dates.

III.

At different times the board of public works prescribed scales of prices for contracts for the various kinds of work to be done. Upon the subject of grading the following entries are found upon their journal:

"SEPT. 14, 1871.—The following scale of prices for work and material was adopted:

* * * * * * *

"Grading per cubic yard, earth to be deposited where directed without extra charge, 20 cents.

"SEPTEMBER 26, 1871.—Resolved, That in fixing the price of grading at the rate of 20 cents a cubic yard, the board did not intend that it should apply to old gravelled streets ordered to be cut down; but will allow 40 cents for all such grading for the depth of 2 feet below the surface; and that the chief of the bureau of contracts be notified of this action.

51 JAN'Y 22, 1872.

"Ordered, That the prices of grading be fixed from and after this date at 30 cents per cubic yard, including the hauling, not to exceed two hundred (200) feet; for each additional two hundred (200) feet 1 cent additional per cubic yard will be allowed.

"WASHINGTON, *July 17, 1872.*

"R. C. PHILLIPS, Esq., *Ch'f Eng'r.*

"SIR: You are hereby informed that inasmuch as frequent applications are being made to the board for the allowance of the advanced rates for work done previous to such increase, it is their desire and intention to adhere strictly to the old rates applicable to contracts made prior to the increase of prices, and allow the latter only on contracts since awarded.

"By order of the board.

"CHAS. S. JOHNSON,
"*Asst. Secretary.*

"JULY 15, 1873.—Auditor was notified that the price for hauling earth has been established at 1¼ cents per cubic yard for every 100 feet of haul over first 200 feet since June 1, 1873. Contract clerk so notified.

"WASHINGTON, D. C., *September 23, 1873.*

"GENTLEMEN: In making our assessments on certain streets where final measurements are made, but no settlement had with the contractor, I find that the item of 'Haul, so many feet over 200 feet' gives constant rise to questions with the contractor as to the amount allowed therefor. At present it stands at 1¼ cents per yard for every yard hauled 100 feet over 200 feet for all work done since June 1, 1873. Yet the board, in a few instances, have granted the 1¼ cents for work done prior to that date, and all contractors claim the same amount, 'in view,' as they say, 'of the fact that they have to stand a discount of 20 per cent' on their paper. I think all this could be satisfactorily arranged by allowing 1¼ cents for all open accounts—that is, where final and absolute settlements have not been made. I respectfully suggest this in order that assessments may be complete and agree with the final bill as settled with the contractor.

"Very respectfully,

"J. C. LAY,
"*Auditor Board of Public Works.*

"The BOARD OF PUBLIC WORKS.

"SEPTEMBER 27, 1873.—J. C. Lay, auditor, was notified that in settlements of accounts for extra haul, that 1¼ cents per cubic yard for each additional 100 feet beyond the first 200 feet for all work done since January 1, 1873, will be allowed.

"BOARD OF PUBLIC WORKS, DISTRICT OF COLUMBIA,
"*Washington, September 27, 1873.*

"SIR: I am directed by the board to notify you that in the settlement of accounts for extra haul, that 1¼ cents per cubic yard for each additional 100 feet beyond the first 200 feet for all work done since January 1, 1873, will be allowed.

"Very respectfully,

"EDWARD JOHNSON,
"*Assistant Secretary.*

"J. C. LAY, Esq., *Auditor, etc.*"

## IV.

### CONTRACT NO. 243 AND EXTENSIONS.

"This contract, made and concluded this twenty-fourth day of April, in the year one thousand eight hundred and seventy-two, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, A. B. Mullett, and S. B. Brown, constituting and composing the board of public works of the District of Columbia, of the first part, and Daniel A. Connolly, of Washington, D. C., of the second part, witnesseth: First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents and hereunto annexed,
52 to furnish at his own proper cost and expense all the necessary materials and labor, and, in a good, firm, and substantial manner, to grade Massachusetts avenue, from New Jersey avenue to Lincoln square, in the city of Washington, D. C., said grading to be executed in every respect in conformity with the specifications following, to wit:

"SPECIFICATIONS GRADING STREETS, ETC.

"The base of excavation, including the sidewalks, will be feet wide. The roadbed proper will be feet between the curbs, and must be graded to ( ) inches below the level of the curb at the centre of the street, and ( ) inches below the level of the curb at the side, leaving the roadbed a fall of inches from the centre to the sides.

"The material obtained in grading will be deposited where directed by the chief engineer of the board of public works; and no sand, gravel, cobblestones, curb, bricks, or pipe obtained in the excavation, or found on the premises, shall be considered the property of the party of the second part, nor used by him or them, except as hereinafter prescribed.

"The filling must be done in layers not exceeding 18 inches in thickness, so that the same may be well compressed by the driving of the carts over it.

"The excavations will include only the roadbed, sidewalks, and the slope from them to the building line, according to the grade to be given by the chief engineer of the board of public works. No more grading must be commenced at any one time than 1 square, except by permission

of the chief engineer; and the filling must be brought up to grade established and shown by plans before the work can be accepted as completed.

"In the allowance for hauling, the length of the haul over 200 feet and the amount of material hauled will be determined on an average basis by the chief engineer of the board of public works, whose decision shall be final. All materials, such as curb, cobble, brick, etc., removed from the premises, and deposited under the directions of the chief engineer, will be paid for at the rates for hauling established by the board of public works.

"All measurements will be made in the excavation only.

"Second. It is further agreed that the said party of the first part shall appoint, from time to time, such persons or person as may be by said party deemed proper, to inspect the material to be furnished, and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

"Third. It is further agreed that the work under this contract shall be commenced on or before the 29th day of April, in the year 1872.

"Fourth. It is further agreed that the said party of the first part may, on notice to the party of the second part, suspend work under this contract; but if not suspended, it shall be completed within ninety days from the date fixed for its commencement, and that the said work shall not be sublet without the consent in writing of the said party of the first part.

"Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is willfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof, and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part, and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due to the said party of the second part, under and by virtue of this agreement, or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference, and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

"Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals, property, or otherwise, on the line of the work, or adjacent thereto, shall be sustained by the said contractor.

"Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him on work under this contract, in cash current, and not in what is denomi-
53 inated store pay or orders; and that he will from time to time, and as often as may be required by said party of the first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required. And if such evidence is not furnished, such sum or sums as may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

"Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the board of public works aforesaid, and that whenever the said chief engineer aforesaid shall certify, in writing, that the party of the second part completely performed this contract on his part, and shall submit with said certificate his estimate of the amount due the party of the second part, then within thirty days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made, as hereinafter mentioned. And it is further expressly agreed that no money shall become due and payable under this contract, except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work, except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract. Provided, that partial payments may be made under direction of the board, otherwise than upon the estimates of the engineer, as provided above, if in the opinion of the board the vigorous prosecution of the work will be promoted thereby.

"Ninth. It is further agreed that if at any time during the period of one year from the completion of the work to be done under this contract any part or parts thereof shall become defective from imperfect or improper material or construction, and in the opinion of the said party of the first part require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part; and in case of a failure or neglect of the said party of the second part so to do, the same shall be done under the directions and orders of the party of the first part, at the cost and expense of the party of the second part.

"Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit: Grading, thirty (30) cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not

exceeding two hundred (200) feet, and one cent additional per cubic yard for every two hundred (200) beyond the above, which said sums or prices the said party of the first part shall pay to the said party of the second part, as herein provided.

"Eleventh. It is further agreed that the measurements shall be made by the engineer of the board or his assistants.

"Twelfth. And the said party constituting and composing the board of public works in and for the District of Columbia aforesaid agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay or cause to be paid to the said party of the second part, or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him according to the contract.

"Thirteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to said contract, and also to any law of the District of Columbia pertinent thereto, or to any part thereof, as fully as if the same were particularly set forth herein.

"In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written."

[Signed by the parties.]

After a large amount of work had been done under this contract, and several partial measurements and payments made, the work was suspended by the board of public works under article 4 of the contract.

After the appointment of Commissioners under the act of June 20, 1874, at the request of Connolly work was resumed under this contract, and partial measurements and payments from time to time were made thereon.

54 In making payments on four of these measurements the "haul" was computed at the rate of 1¼ cents for each 100 feet over 200 feet instead of 1 cent for each 200 feet over the first 200 feet as provided in the contract. These four items of computations are shown below.

A referee appointed by this court in these cases thus reported:

"A controversy having arisen between Connolly and the board of public works in respect of the amount of work done under the original contract No. 243, the matter was referred, on November 20, 1873, for adjudication to a commission consisting of S. T. G. Morsell, Thomas M. Plowman, Joseph F. Collins, and W. P. Bell, and a settlement of the account under said original contract was made in accordance with the award of said commission, as reported by that body to the board of public works November 27, 1873."

There is no sufficient evidence to support this statement of the referee.

(1) December 5, 1873.—38,-07 cubic yards of earth hauled 1,000 feet over 200 feet, computed at 1¼ instead of one-half cent for each 100 feet beyond 200 feet, making an excess of..... $2, 850. 52

(2) July 7, 1875.—26,083.43 cubic yards haul, 1,250 feet over 200 feet allowed at 1¼ cents per 100 feet, in lieu of contract rate of 1 cent per 200 feet. Excess on above... 2, 445. 32

(3) July 27, 1875.—20,875.46 cubic yards haul, 1,717 feet over 200 feet allowed at 1¼ cents per 400 feet, in lieu of contract rate of 1 cent per 200 feet. Excess on above... $2,687.71

(4) February 2, 1876.—5,740 cubic yards haul, 1,000 feet over 200 feet allowed at 1¼ cents per 100 feet, in lieu of contract rate of 1 cent per 200 feet. Excess..... 430.00

Total alleged overpayments..... 8,413.55

The work in items 2, 3, and 4 was done after the resumption, and in 3 and 4 after May 4, 1875.

These computations were made by the District auditor or engineer, and paid through the board of audit.

In this calculation all the work done under the two extensions, and on Fifth street northeast, between D and H, as shown in Finding V, is credited to Connolly. Owing to alleged assignments it is separately calculated in Finding V.

If the alleged overpayments are credited to the defendant there will still be due the claimant on this contract $936.40; if not so credited, $9,349.95 will be due.

The above payments were made through "the board of public works."

## V.

### FIRST EXTENSION OF CONTRACT NO. 243.

May 4, 1875, the parties entered into the following contracts:

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and Daniel A. Connolly that contract No. 243, in the series of contracts made by the board of public works of the District of Columbia, be and the same is hereby extended, with its various terms, conditions, and stipulations, to embrace the following work, viz:

"Grade upon the following streets, between the points named:

"B st. south, between 4th st. east and Boundary;

"C st. north, between 4th st. east and Boundary;

"A st. south, between 3d st. east and Boundary;

"D st. north, between 1st and 4th st. east;

"Delaware ave., between C st. north and Boundary;

"E st. north, between 2nd and New Jersey ave.;

"6th st. east, between Mass. ave. and East Capitol st.;

"1st st. east, between C st. north and Boundary;

55 "or upon such and so many of these streets as the engineer of the District of Columbia shall determine. It is understood that the work herein described is in lieu of similar work relinquished on Massachusetts avenue, and the engineer aforesaid shall determine what amount of grading will be a just equivalent for work relinquished on said Massachusetts avenue, as contemplated by this agreement. And the said Daniel A. Connolly shall, under the direction of the engineer aforesaid, replace the old material on said streets—that is to say, reset the curbs and relay the brick foot pavements where necessary, according to specifications hereunto annexed.

"It is further agreed that the said Daniel A. Connolly shall receive the prices established and paid by the board of public works for work of similar character, provided that payment shall be made in the bonds issued by the sinking-fund commissioners of the District of Columbia, under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value.

"In witness whereof the said District of Columbia has caused this instrument to be signed by the Commissioners of said District, appointed under the act of Congress entitled "An act for the government of the District of Columbia, and for other purposes," approved June 20, 1874, and the common seal of said District to be hereto affixed, and the party of the second part to these presents has hereunto set his hand and seal."

[Signed by the parties.]

SECOND EXTENSION OF CONTRACT NO. 243.

October 6, 1875, the parties entered into the following contract:

"For and in consideration of the stipulations hereinafter contained, it is agreed by and between the Commissioners of the District of Columbia and Daniel A. Connolly that contract No. 243, in the series of contracts made by the board of public works of the District of Columbia, be and the same is hereby extended, with its various terms, conditions, and stipulations, to embrace the following work, to wit: Relay the old material on Massachusetts avenue, between New Jersey avenue and Lincoln square, wherever directed by the engineer of the District of Columbia.

"It is further agreed that the work herein specified shall be completed by the first day of November, 1875, under penalty of forfeiture of all right and title to perform the same.

"It is further agreed that the said Daniel A. Connolly shall receive the prices established and paid by the board of public works for work of similar character, provided that payment be made in the bonds issued by the sinking-fund commissioners of the District of Columbia, under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value."

All the work contracted for by these two extensions was performed, proper measurements thereof made, pay computed according to stipulations of the contracts, and payments made thereon. The computations and payments are embraced in the statement of accounts under contract No. 243, whereby the balance of $9,349.95, upon which claimant sues, is made to appear.

Said Connolly, in mistake as to the extent of the two extension contracts, did certain work on Fifth street, between D and H streets northeast, not stated in the contracts. This work was computed at the rates named in the two extensions, and amounted to $2,327.91.

As a precaution against conflicting claims, said Connolly, at the suggestion of the defendant, procured from one William Hussey, in whose contract this work was supposed to be included, an assignment dated July 31, 1876, of his interest therein, and on the same day assigned $2,327 thereof to William A. Galt, the claimant in case No. 162, upon which assignment the said Galt bases his claim in said case. Both of these assignments are set forth in Finding XVII.

If the said Galt or other assignees are entitled to claim the $2,327 so assigned, the same should be deducted from any sum that may
56 otherwise be found in favor of the claimant, Eslin, it having been credited to him in the accounts under contract No. 243, from which arises the alleged balance of $9,349.95.

The last payment on contract No. 243 and extensions was made January 1, 1876, and all work under them was done prior to that date.

## VI.

### CONTRACT NO. 349.

This contract is dated June 24, 1872, and, except as to the work to be done, is like contract No. 243 in Finding IV:

"Grading, 30 cents per cubic yard, including a haul of 200 feet, and one (1) cent additional per cubic yard for every 200 feet of haul beyond the first two hundred feet."

A final measurement of the work done under this contract was made December 2, 1874. Three items of the work were computed by the District auditor or engineer, at the following prices:

| | |
|---|---|
| (1) 2,250½ cubic yards grading, computed at 40 cents a cubic yard instead of 30 cents, as provided in the contract, making an excess of | $225.05 |
| (2) Haul on said 2,250½ cubic yards, 2,800 feet over 200 feet, computed 1¼ cents a cubic yard for every 100 feet over 200 feet, instead of 1 cent for every 200 feet, as provided in the contract, making an excess of | 474.00 |
| (3) Haul of 1,406 cubic yards, 800 feet over 200 feet, computed as in item 2, making an excess over contract rate of | 84.00 |
| Total excess of the three items | 783.05 |

Other grading and haul, appearing upon the same vouchers, are computed at the contract rate.

February 2, 1875, these several bills were paid through the board of audit.

If these alleged overpayments are credited to the defendant there will still be due the claimant $2.51. If not so credited there will be due him $785.56, the amount claimed. Last payment made December 1, 1874.

## VII.

### CONTRACTS NOS. 595 AND 1057½.

Contract No. 595 is dated November 12, 1872, and provides for certain work on A street south. Prices stated for grading, 30 cents per cubic yard, to include the first 200 feet of haul, and 1¼ cents per cubic yard for each additional 100 feet of haul beyond the first 200 feet.

Contract No. 1057½ is dated April 8, 1874, and provides for certain work on A street southeast. It is drawn on a printed blank and the blanks for prices are not filled in.

The work was done under these two contracts, and, as computed by the District auditor or engineer and the board of audit, amounted to $9,911.93. The payments made amount to $9,845.93, leaving a balance due claimant of $66.65, the amount claimed in the petition.

In making the computations by which the above amount is found due, 2,400 cubic yards of grading, done under contract No. 595, is
57 reckoned at 40 cents a cubic yard instead of 30 cents, as provided in the contract, making an excess of $240, which sum was paid February 9, 1875, through the board of audit.

In the same voucher, 5,003 cubic yards grading is reckoned at 30 cents a cubic yard, as provided in the contract.

If this excess were credited to the defendant, the claimant would be overpaid $173.35; if not so credited, the balance in favor of the claimant is $66.65.

The last payment on contract No. 595 was made August 1, 1874.

## VIII.

### CONTRACT NO. 665.

Under this contract dated April 22, 1873, the contractor agreed to perform certain work on B street north, between Second and Fourth streets east. Article 10 of said contract stipulated that he should receive the sum of 30 cents per cubic yard for grading, to include 200 feet of haul and 1 cent additional for every 200 feet hauled beyond the first 200 feet.

A final measurement for this work was made for Connolly by Assistant Engineer Bodfish, dated December, 1874. In voucher based on said measurement the contractor is allowed 1¼ cents per cubic yard for every 100 feet of haul beyond the first 200 feet, in lieu of contract rate of one-half cent.

The amount is as follows:

"February 9, 1875, 9,874 cubic yards haul, 2,124 feet over 200 feet allowed 1¼ cents per 100 feet in lieu of contract rate, 1 cent per 200 feet. Excess, $1,568.62."

This sum was paid through the board of audit, February 9, 1875.

If this alleged overpayment were credited to the defendant, the claimant would be overpaid on this contract $1,012.37; if not so credited, there is still due the claimant the sum of $556.25, as claimed in the second amended petition.

## IX.

### CONTRACT NO. 690.

May 20, 1873, the contract clerk was ordered by the board of public works to prepare a contract with Daniel A. Connolly for grading, setting curb, and laying the sidewalks on B street north, from Delaware avenue to First street east, and on First street east, from B street north to B street south, work to be completed in thirty working days, and the dirt to be deposited in the reservation at foot of Capitol.

A contract was prepared, and, although bearing date as of May 20, 1873, appears not to have been executed until November, 1873, as the records of the board of public works show that several amendments and modifications of said contract were ordered to be made between May and November, 1878, the last amendment ordered being November 1, 1873, all of which appear in the body of the contract as of May 20, 1873.

58 By this contract Connolly agreed to grade, set the curbstones, and lay and put down the brick foot pavements on B street north, from Delaware avenue to Second street east; also to grade the carriageway, set the curbstones, and lay and put down the brick foot pavements on First street east, between East Capitol street and B street north; also to grade the sidewalks on the east side of First street east, between A and B streets north.

The prices to be paid for doing the work embraced in this contract (article 10) are as follows:

Grading, 30 cents per cubic yard, to include the first 200 feet of haul, and 1 cent additional per cubic yard for every additional 200 feet of haul beyond the first 200 feet for B street, and 40 cents per cubic yard for First street, conditions as to haul the same as on B street. For laying brick foot pavements and setting curbstone the rates are the same as those specified in other contracts in this cause.

It will be observed that the order to draw the contract embraced work on First street east, from B street north to B street south, but as drawn only embraced work on First street east, from East Capitol street to B street north, covering two blocks only. The work was, in fact, done from C street north to B street south, covering five blocks.

Under what arrangements this additional work was done does not appear.

A final measurement of all this work was made December 27, 1873, by Assistant Engineer Charles E. Barney.

According to this measurement, which is undisputed, 11,100 cubic yards of grading was done on the two blocks named in the contract and hauled 2,800 feet over the first 200 feet. The price of the extra haul was reckoned and paid at the rate of 1¼ cents a cubic yard for each 100 feet, making an excess over the contract rate of $2,331.

On the three blocks not named in the contract, but measured and paid on the same vouchers, the amount of grading done was 32,193 cubic yards and the extra haul 2,800 feet. The price of extra haul was reckoned at 1¼ cents for each 100 feet, which was the board rate, making an excess over the rate prescribed in the contract for the other two blocks of $6,760.53. If the District should be credited with both these alleged overpayments, Connolly has been overpaid in the sum of $9,091.53 less $30.49=$9,061.04. If credited with the smaller sum only, Connolly has been overpaid $2,331 less $30.49=$2,300.51. If credited with neither, there is due the claimant $30.49.

These alleged overpayments were made December 31, 1873. The last payment on the contract was made June 1, 1875.

These computations were made by the District auditor or engineer.

## X.

CONTRACT NO. 828.

This contract was made August 8, 1874. The work amounted to $1,159.56, of which $300.04 remains due and unpaid.

59

## XI.

CONTRACT NO. 1028.

By this contract, made January 30, 1874, the claimant agreed to do certain grading on G street north and Second street east. Relative to payment, the contract contains the following provision:

"Grading, thirty (30) cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding two hundred (200) feet, and one (1) cent per cubic yard for every additional two hundred (200) feet of hauling beyond the first two hundred feet.

"Grading of old graveled streets for first feet, per cubic yard, cents."

June 2, 1874, there was a partial measurement of the work made by the District engineer, and upon it the price of grading is calculated at 40 instead of 30 cents a cubic yard on 3,000 cubic yards, making a difference of $300. If this alleged overpayment is credited to the defendant, there will still be due to the claimant $1,645.09. If not so credited, there is due him $1,945.09. This $300 was paid through the board of audit. Last payment made January 1, 1876.

## XII.—*Counterclaim.*

CONTRACT NO. 447.

This contract is dated July 12, 1872, and provides for certain grading to be done on Third street east, between Maryland avenue and H street north. The contract provides the following prices:

Grading, 30 cents per cubic yard, to include the first 200 feet of hauling, and 1 cent per cubic yard for every additional 200 feet of hauling.

September 20, 1872, Connolly applied for a measurement of the grading done by him on Third street northeast, from Maryland avenue to F street, and thereupon a measurement of the same was made by Wm. Forsyth, assistant engineer, showing the amount of grading done to October 5, 1872, to have been 17,325 cubic yards, which amount was audited by the auditor of the board of public works at the contract rate, 30 cents per yard, making $5,197.50, for which certificates were issued to Connolly and the account closed on the 7th day of April, 1873.

This account was afterwards opened by the board of audit, upon a sworn statement made by Connolly, on the 2d day of November, 1875, that the 17,325 cubic yards had been hauled a distance of 1,700 feet. Assuming this statement to be correct, he was entitled, according to the terms of the contract, to claim $1,299.38 additional compensation. The board of audit, however, reckoned the haul at 1¼ cents for every 100 feet, making the amount $3,681.56, making an excess over contract rates of $2,382.18.

This sum of $3,681.56 was paid to Albert Gleason, assignee of Connolly.

CONTRACT NO. 527.

This contract, dated September 13, 1872, provided for certain work on several streets. Prices fixed as follows:

Grading, 30 cents per cubic yard, to include the first 200 feet of hauling, and 1 cent per cubic yard for every additional 200 feet of hauling.

60 The amount of work done under this contract, as reported by the engineers of the board of public works, is as follows:

| | |
|---|---|
| E street, 7,327 cubic yards grading, at 30 cents per yard.. | $2,198.10 |
| Certificate of Wm. Forsyth, asst. engineer, October 5, 1872, with no allowance for hauling, Fourth street: | |
| 7,999 cubic yards grading, at 30 cents ..... | 2,399.70 |
| 7,999 cubic yards haul 600 feet over 200 feet, at 30 cents..... | 239.97 |
| Making ..... | 4,837.77 |

Which amount was audited by the auditor of the board of public works and certificates issued to Connolly therefor. This account was opened by the board of audit under the same conditions as already stated under the head of contract No. 447, and a haul of 1,000 feet at 1¼ cents per 100 feet allowed on the work done on E street, making an additional allowance on 7,327 cubic yards, at 12½ cents per yard, equal to $915.87, which sum was paid A. Gleason under the assignment elsewhere referred to. If this excess is credited to the defendant, it will leave a balance of $622.79 in favor of the District.

CONTRACT NO. 693.

This contract is dated May 21, 1873, and provides for work on certain streets. The provision for payment is as follows:

"Grading, thirty (30) cents for each and every cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding two hundred (200) feet, and one (1) cent per cubic yard for every additional two hundred (200) feet of hauling beyond the first two hundred feet.

"Grading of old graveled streets, for first feet, per cubic yard, cents."

The work contracted for was completed and measured, computed, audited, and certificates given therefor under the board of public works. The computation was made at the rates provided for in the contract. Thus the account was closed.

These accounts were afterwards opened by the board of audit, and the following additional allowances made thereon, to wit:

| | |
|---|---|
| Alley in square 575, 861 cubic yards, at 1¼ cents per 100 feet of haul in lieu of ½ cent per 100 feet, being in excess of contract price..... | $129.15 |
| Third street northeast, 7,540 cubic yards, at 1¼ cents per 100 feet of haul in lieu of ½ cent per 100 feet, being in excess of contract price ..... | 904.80 |
| Total additional allowance by board of audit..... | 1,033.95 |

If this alleged overpayment is credited to the defendant the contract is overpaid in the sum of $1,033.95.

These three items of counterclaim amount to $5,062.02. All were paid to Albert Gleason, assignee of Connolly.

The case was once before a referee, who found the amounts of the counterclaim as above stated. No exception was taken in the court to the amount of the overpayments, but exception was taken to the allowance as a cou'terclaim, because they were paid, not to the claimant, but to Gleason.

These three items of counterclaim were paid to Gleason under the following assignment:

"For and in consideration of the sum of one dollar ($1.00) lawful money of the United States, the receipt whereof is hereby acknowledged, I hereby transfer and assign to Albert Gleason, of the
61 city of Washington, District of Columbia, all my right, title, and interest in and to any and all claims that may have been or may be presented to or allowed by the board of audit of the District of Columbia, arising under or out of any and all of my contracts with the late board of public works of the District of Columbia for work done by me prior to July 7, 1874, and I hereby make, constitute, and appoint, and by these presents do make, constitute, and appoint, the said Albert Gleason my true and lawful attorney, irrevocable, for me and in my name, place, and stead, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises, to collect, receipt for, and receive from the board of audit of said District all sums of money, certificates, or other evidences of indebtedness now due or that may become due me under or in connection with said contracts as above specified, and to from time to time furnish any further evidence necessary or that may be demanded; giving and granting to my said attorney full power and authority to do and perform in my name all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might do or could do if personally present at the doing thereof, with full power of substitution and revocation, and in my name to receipt and sign all vouchers, and endorse, transfer, and sell all my certificates, orders, and warrants; hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue thereof.

"In witness whereof I hereunto set my hand and seal this 29th day of October, 1875.

"DANIEL A. CONNOLLY." [SEAL.]

[Witnessed and acknowledged.]

## XIII.

It does not appear that said Gleason has ever claimed, under his assignment, any of the balances sued upon in this case, nor has the defendant set up the assignment as a defense.

It does not appear that Daniel A. Connolly, or his administrator, ever ratified the act of Albert Gleason in receiving overpayments on claims presented to the board of audit, or ever received any benefit therefrom.

## XIV.

By contract No. 31, new series, between Daniel A. Connolly and the District of Columbia, dated June 19, 1876, it was among other things, agreed as follows:

"It is further agreed that in consideration of this contract the said Daniel A. Connolly will make no claim against the District of Columbia for damages on account of suspension of work, or for other cause, under any order for work, or any contract or agreement between the Commissioners of the District of Columbia and the said Daniel A. Connolly, heretofore existing between said parties and now cancelled, except for just settlement for work already completed."

## XV.

APPLICABLE TO THE CASE OF DOWNMAN & GREEN, NO. 280.

"MEMORANDA OF AGREEMENT.

"It is hereby agreed between Rawleigh W. Downman and Osceola C. Green, both of the city of Washington, of the first part, and Daniel A. Connolly, of the second part, that, whereas the said party of the second part has executed a certain power of attorney, dated December, 1874, whereby the said parties of the first part are authorized to draw and receipt for money, bonds, or certificates due said party of the second part from the District of Columbia for work done or to be done under contract No. 243: Now, then, the party of the second part agrees that the said parties of the first part may sell or hypothecate so much of the bonds or certificates so drawn under said power of attorney as may be necessary to reimburse said parties of the first part for all moneys advanced by them and for all proper costs, charges, and commissions,
62 and upon the discharge of all such indebtedness the said parties of the first part hereby agree to return, surrender, and release said power of attorney and the residue, if any, of such bonds or securities to the said party of the second part.

"In testimony whereof the said parties of the first part and the said party of the second part have hereunto set their hands and seals this 1st day of December, 1874.

"DANIEL A. CONNOLLY. [SEAL.]
"OSCEOLA C. GREEN. [SEAL.]
"R. W. DOWNMAN. [SEAL.]

"POWER OF ATTORNEY.

"Know all men by these presents that I, Daniel A. Connolly, of Washington City, in the District of Columbia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint R. W. Downman and Osceola C. Green, of Washington City, in the District of Columbia, my true and lawful attorney, for me, and in my name, place, and stead to demand, ask, sue for, collect, and receive all sums of money, bonds, or any other claims whatsoever which are due, owing, or payable to me from the District of Columbia, or any of the late governments or

authorities therein, arising from work done, to be done, on Massachusetts avenue under contract No. 243, between New Jersey avenue and Lincoln square; and for the purpose aforesaid I do hereby grant unto my said attorney full power and authority to do and perform all and every act whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises.

"In witness whereof I have hereunto set my hand and seal the 5th day of December, in the year 1874.

"DANIEL A. CONNOLLY. [SEAL.]

"POWER OF ATTORNEY.

"Know all men by these presents that I, Daniel A. Connolly, of Washington City, in the District of Columbia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Rawleigh W. Downman and Osceola C. Green, or either of them, my true and lawful attorneys, for me and in my name, place, and stead to collect, sue for, receive, and receipt for all monies or certificates of indebtedness now due or to become due to me by reason of work done for the District of Columbia on the streets named in letter from the engineer's office, of April 21st, 1875, and also 2d st. east from Mass. to Maryland avenue, No. 1948, Vol. A, 1875, in consideration of monies advanced by them to pay for labor in the execution of the above-mentioned contracts, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

"In testimony whereof I hereunto set my hand and seal this 25th day of May, 1875.

"DANIEL A. CONNOLLY. [SEAL.]

"This agreement, made this 31st day of July, A. D. 1875, between R. W. Downman and O. C. Green, trading under the firm name of Downman & Green, of the first part, and Daniel A. Connolly of the second part, all of the city of Washington, District of Columbia, witnesseth:

"Whereas the said Daniel A. Connolly has entered into a contract with the Commissioners of the District of Columbia to make certain improvements on Mass. avenue, D. st. NE., Third st. E., and other streets designated in letters from the engineer of D. C. under dates April 21st, '75, and May 20th, '75, and any other work which may be hereafter ordered to be done in connection therewith; and whereas the said Daniel A. Connolly has requested the said Downman & Green to raise for him, and furnish from time to time as the same may be required, money sufficient to carry on and complete the said contract; and whereas the said Downman & Green have agreed to furnish said

money, and have actually paid certain sums in performance of said agreement, the said Daniel A. Connolly having executed and filed with the board of audit of the District of Columbia a power of attorney empowering the said Downman & Green to receive and receipt for all monies or certificates payable to him from the District of Columbia on account of work done under the aforesaid contract:

"Now, therefore, in consideration of the performance of the services before mentioned by the said Downman & Green, the said Daniel
63 A. Connelly here authorizes the said Downman & Green to sell or otherwise dispose of the certificates by virtue of said power of attorney aforesaid, and out of the proceeds arising therefrom first to reimburse themselves for all sums advanced under this agreement and in addition a sum equal to twelve per cent of the amount advanced by them as compensation for their time and trouble in procuring the money to be advanced according to the terms of this agreement.

"Witness our hands and seals this 31st day of July, A. D. 1875.

"DOWNMAN & GREEN. [SEAL.]
"DANIEL A. CONNOLLY. [SEAL.]

"Whereas the firm of Downman & Green, acting under a certain agreement with me, have from time to time advanced certain sums of money to me to be used in prosecution of certain contracts between me and the District of Columbia, which advances were made upon the terms set forth in said agreement; and whereas the said Downman & Green have at my request from time to time advanced other monies to me for the payment of notes, interest, taxes, &c.: Now, I do hereby acknowledge and declare that I agreed with said Downman & Green, when I requested them to make advances other than those necessary for carrying on my contract with the District of Columbia, that I would pay interest at the rate of ten per cent per annum upon all such advances by them made to me or for my use (and not embraced in the original agreement between us) from the date of such advances until payment of the same.

"DANIEL A. CONNOLLY.

"WASHINGTON, D. C., *June 15th, 1876.*

"Know all men by these presents that I, Andrew Gleason, in consideration of the sum of two thousand three hundred and eighty-one $\frac{25}{100}$ dollars in cash, and the further sum of two hundred and ninety-eight $\frac{70}{100}$ in 3.65 bonds to me paid by Daniel A. Connolly, do hereby relinquish all my interest in contract No. 243 for work on Mass. avenue, between New Jersey avenue and Lincoln square.

"ANDREW GLEASON."

Downman & Green furnished the money to carry on contracts 243 and 1948.

It does not appear that any settlement has ever been made by Downman & Green with Connolly, nor that any statement of advances and receipts by Downman & Green was ever rendered to Connolly; it appears that Downman & Green made advances amounting in all to upwards of $58,000, and that in February, 1876, their advances exceeded receipts in the sum of about $8,700.

After this (July 9, 1880) Connolly revoked his powers of attorney to Downman & Green.

## XVI.

APPLICABLE TO THE CASE OF S. J. RITCHIE, NO. 150.

"Know all men by these presents that we, Rawleigh W. Downman and Osceola C. Green, as firm of Downman and Green, of Washington, D. C., in consideration of ten dollars ($10), lawful money of the United States, to us paid before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over unto S. J. Ritchie, of Summit County, Ohio, his executors, administrators, and assigns, to his and their own proper use and benefit, all our and each of our right, title, and interest in and to any and all sum or sums of money now due or to grow upon certain contracts between the late board of public works of the District of Columbia, numbered, respectively, 243 and 1028 (and the extensions thereof by the Commissioners of said District), between the said board of public works and one Daniel A. Connolly, together with all our right, title, and interest in and to the same by virtue of powers of attorney from said Connolly to us now in the hands or custody of the said Commissioners or otherwise; which accounts have been audited and allowed by the late board of audit of said District for the full amount of seven thousand and fifty dollars ($7,050), and we do hereby give the said S. J. Ritchie, his executors, administrators, and assigns, the full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand,
64 collect, receive, compound and give acquittance for the same, or to any part thereof, and in our and each of our name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

"And we, the said Rawleigh W. Downman and Osceola C. Green, for and in consideration of the further sum of ten ($10) dollars to us paid by the said S. J. Ritchie at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby constitute, appoint, and substitute the said S. J. Ritchie and his assigns to be our attorney irrevocable in the premises, to do and perform all acts, matters, and things touching the premises, in the like manner to all intents and purposes as we could if personally present.

"In witness whereof we have hereunto set our hands and seals this 11th day of February, 1878.

"RAWLEIGH W. DOWNMAN. [SEAL.]
"OSCEOLA C. GREEN." [SEAL.]

## XVII.

APPLICABLE TO THE CASE OF WM. M. GALT, NO. 162.

"For a valuable consideration, in hand paid by Daniel A. Connolly, of the city of Washington, in the District of Columbia, and received by me, I do hereby assign and transfer to the said Daniel A. Connolly and his assigns an interest to the extent and amount of twenty-three hundred and twenty-twenty-seven dollars ($2,327.00) in my claim against the District of Columbia for monies due me for work and labor done by me for said District under and by virtue of the terms of a certain contract between myself and said District, known as contract No. 582, to be collected and paid out of any monies due me under said contract. And I

further authorize and empower the said Connolly to demand and receive the aforesaid sum of $2,327.00 from the District of Columbia and the authorized representatives thereof, the same to be by them deducted from the amount due me.

"And I further give and grant to the said Connolly full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises as fully as I might or could do, with full power of substitution or assignment, and to receipt and sign all vouchers to the extent of the interest hereby assigned, hereby ratifying and conferring all that the said Connolly or his assigns may or shall lawfully do or cause to be done by virtue thereof.

"In witness whereof I hereunto set my hand and seal this 31st day of July, A. D. 1876.

"WILLIAM HUSSEY. [SEAL.]

"For a valuable consideration, in hand paid by William M. Galt, of the city of Washington, in the District of Columbia, and received by me, I do hereby assign and transfer to the said William M. Galt and his assigns all my right, title, and interest acquired by virtue of a certain transfer or assignment heretofore made to me by one William Hussey, and dated the 31st day of July, A. D. 1876, in and to a certain claim heretofore presented against the District of Columbia by the said William Hussey for moneys due him for work and labor by him performed for said District under and by virtue of a certain contract between the said William Hussey and the District of Columbia, known as contract No. 582.

"The extent and the amount of the interest in said claim transferred by said William Hussey to me by said assignment is $2,327.00; and I do hereby authorize and empower the said William M. Galt to demand and receive the aforesaid sum of $2,327.00 from the District of Columbia and the authorized representatives thereof, the same to be by them paid out of and deducted from any moneys due me under said contract, by virtue of said assignment or otherwise.

"And I further give and grant to the said William M. Galt full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises as fully as I might or could do, with full power of assignment or substitution, and to receipt and sign all vouchers to the extent of the said interest hereby assigned, hereby confirming all that the said William M. Galt or his assigns may or shall lawfully do or cause to be done by virtue hereof.

"In witness whereof I hereunto set my hand and seal this 31st day of July, A. D. 1876.

"DANIEL A. CONNOLLY." [SEAL.]

## XVIII.

Of all the assignments and powers hereinbefore set forth the defendants had due notice.

65 DAVIS, J., delivered the opinion of the court.

This case now comes before us for a new trial, based upon assignments of error alleged to have been committed in our former findings of fact and conclusions of law.

The first error alleged is that Connolly, the contractor, is charged with $2,850.52, paid him December 5, 1873. Plaintiff urges in support of his contention that a controversy arose between Connolly and the board of public works as to his compensation; that the matter was referred to commissioners, who found a certain amount due, which was paid. This, it is contended, was, in effect, a submission to arbitration. The conclusion was in effect an award of duly empowered arbitrators, it is said, and the District can not now recover back any money paid under the commissioners' decision. The account (plaintiffs urge) must be held to be finally and conclusively settled.

The only evidence we have upon this point is found in the report to this court of the referee appointed by us prior to the former hearing. He thus reported:

"A controversy having arisen between Connolly and the board of public works in respect of the amount of work done under the original contract, No. 243, the matter was referred, on November 20, 1873, for adjudication to a commission consisting of (four names mentioned), and a settlement of the account under said original contract was made in accordance with the award of said commission as reported by that body to the board of public works November 27, 1873."

There is no dispute in this matter as to the amount of work done. The point is that Connolly was allowed board of works rates instead of his contract rates in this payment. We do not consider that the referee's report (and we have no other evidence) shows a submission to an arbitration which could produce an award binding and conclusive upon the District, or that the decision of these commissioners effected such a settlement as amounts in law to an accord and satisfaction. On the contrary, this report, in our opinion, simply shows a payment made upon the statement of adjusters appointed in the course of business, prepared upon the assumption that Connolly should be allowed board rates and not contract rates, an assumption held by this court to be unwarranted.

As to this we can only repeat our former ruling herein, to wit:

"This question has been so fully discussed in a recent opinion of the chief justice in the case of Barnes v. The District of Columbia (22 C. Cls. R., p. 366) that it is unnecessary to go over the ground again. We hold in these cases as we held there, that these orders (of the board of public works) do not change 'the written contracts between the parties made before the orders were issued, and much less contracts made thereafter.'

"The claimant coming into court for a final settlement with the District, and having received public money to which he had no legal claim, must be held liable to refund it. (22 C. C. R., 400). See also Barnard's case, 127 U. S. R., 409, 410."

We now again hold that the District can recover back the overpayment; but this only as to Connolly, the contractor.

Otherwise is it as to his assignees. Between Connolly and the defendants it may be well enough to make a general account covering all his contracts, and, after striking a balance, to cause the defendant to pay the sum shown due him or to authorize the defendant to recover the sum due from him, as the result may be in Connolly's favor or against him. But an assignee of a contract which is profitable can not be charged with his assignor's loss upon another—entirely different and losing—contract,

66 when, as in this case, he has furnished the money upon which the contract was completed, with the knowledge of the defendant. The rights of Connolly's assignees, therefore, are (after the assignment of which defendant had knowledge) not to be confounded with his rights or his duties or his liabilities; if his assignee's assignment be of a profitable contract upon which something now remains due and unpaid, their recovery can not be defeated by the fact that Connolly owes the District for overpayment upon another and losing contract with which the assignees are in no way connected.

Counsel for Connolly's administrator urge that as payments, now held to be overpayments, were made to Lay & Co. as his agents or attorneys or assignees (their quality of agency is disputed), and as they were authorized to receive only what "was due" and not to receive what was not due (that is, not to receive overpayments), no recovery can be had by defendants for such overpayments. It appears, however, at this trial, that the payments made to Lay & Co. reached Connolly. In view of this fact, to wit, that Connolly had the benefit of the payment, we see no reason to change our finding of fact or to examine the nature of Lay & Co.'s assignment or power of attorney, as to which there is dispute. We allow the exception as to Finding X, and allow the $300.04.

During the trial it was stated that all questions between the different assignees were reserved. Judgment will therefore be suspended.

67 OCTOBER 19, 1895.

On motion suggesting death of Osceola C. Green, surviving partner of Downman and Green, No. 280, D. C., it was ordered that this suit be revived in the names of his executors, William A. Gordon and J. Haldsworth Gordon.

BY THE COURT.

68 In the Court of Claims.

*Findings of fact and conclusions of law.*—Filed June 22, 1896.

COLUMBUS J. ESLIN, ADMR. OF DANIEL A. Connolly, *vs.* THE DISTRICT OF COLUMBIA, } No. 375.

Consolidated with

SAMUEL J. RITCHIE *vs.* THE DISTRICT OF COLUMBIA, } No. 150.

HARRIET T. GALT, EXRX. OF WILLIAM M. Galt, *vs.* THE DISTRICT OF COLUMBIA, } No. 162.

WILLIAM A. GORDON AND J. HOLDSWORTH Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, *vs.* THE DISTRICT OF COLUMBIA. } No. 280.

These cases coming on to be heard on the defendant's exceptions to the referee's report, the court, after hearing the argument of counsel and being advised in the premises, overrules the defendant's exceptions thereto and confirms said report and adopts the same as the findings of the court. The distribution of the amount found due, to wit, $13,458.33, as agreed upon by and between the claimants as stated by the referee in his report, the court adopts.

69

CONCLUSIONS OF LAW ON REFEREE'S REPORT.

Upon the facts stated in the referee's report the court, under the act February 13, 1895 (28 Stat. L., 664), and in accordance with the agreement of the parties, decides as conclusions of law as to the said sum of $13,458.33, so found due from the District of Columbia that the several claimants named below each recover judgment against the United States in the amounts stated, viz:

| | |
|---|---|
| In favor of Columbus J. Eslin, administrator of Daniel A. Connolly, cause No. 375, four thousand eight hundred and forty-one dollars and twenty-six cents | $4,841.26 |
| In favor of Samuel J. Ritchie, cause No. 150, five thousand three hundred and thirty-nine dollars and thirty cents | 5,339.30 |
| In favor of Harriet T. Galt, executrix of William M. Galt, cause No. 162, two thousand and twenty-seven dollars and one cent | 2,027.01 |
| In favor of William A. Gordon and J. Holdsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, cause No. 280, one thousand two hundred and fifty dollars and seventy-six cents | 1,250.76 |
| Amounting in all to | 13,458.33 |

which said sum, and as well the several amounts composing the same, were due and payable February 1st, 1876.

70

In the U. S. Court of Claims.

COLUMBUS J. ESLIN, ADMINISTRATOR OF DANIEL A. CONNOLLY, *vs.* THE DISTRICT OF COLUMBIA, } No. 375.

Consolidated with

SAMUEL J. RITCHIE *vs.* THE DISTRICT OF COLUMBIA, } No. 150.

HARRIET T. GALT, EXECUTRIX OF WILLIAM M. GALT, *vs.* THE DISTRICT OF COLUMBIA, } No. 162.

WILLIAM A. GORDON AND J. HOLDSWORTH GORDON, executors of Osceola C. Green, surviving partner of Downman & Green, *vs.* THE DISTRICT OF COLUMBIA. } No. 280.

REPORT OF JOHN W. ANDERSON, REFEREE.

71 *Index to report of referee.*


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72 In the U. S. Court of Claims.

COLUMBUS J. ESLIN, ADMR. OF DANIEL A. Connolly, *vs.* THE DISTRICT OF COLUMBIA. } No. 375.

Consolidated with

SAMUEL J. RITCHIE *vs.* THE DISTRICT OF COLUMBIA. } No. 150.

HARRIET T. GALT, EXRX. OF WILLIAM M. Galt, *vs.* THE DISTRICT OF COLUMBIA. } No. 162.

WILLIAM A. GORDON AND J. HOLDSWORTH Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, *vs.* THE DISTRICT OF COLUMBIA. } No. 280.

REPORT OF JOHN W. ANDERSON, REFEREE.

*To the Honorable Chief Justice and Associate Justices of the Court of Claims:*

73 In accordance with an order passed by your honorable court on the 20th day of May, 1895, remanding the above-entitled causes to me, as referee, to take and state the accounts between the said claimants and the said District, under the contracts set forth in the petitions in said causes, I herewith respectfully submit the following report:

The law of Congress under which the account is now stated was approved February 13, 1895, and reads as follows:

"Public, No. 49.—An act to amend an act entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,' approved June sixteenth, eighteen hundred and eighty.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the adjudication of claims brought under the provisions of the act entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,' approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works; and whenever said rates have not been allowed the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause."

74 The causes mentioned herein have been consolidated and are tried together. They comprise claims for work done and materials furnished by Daniel A. Connolly, now deceased, under and by virtue of certain contracts entered into by and between the board of public works of the District of Columbia and the said Connolly, in the years 1872, 1873, 1874, and 1875, for the improvement of the streets of Washington, and sundry extensions of said contracts subsequently entered into with the Commissioners of the District of Columbia, who succeeded the said board.

In case No. 375, Columbus J. Eslin, the administrator of Connolly, claims that the District of Columbia still owes to the estate he represents the aggregate sum of $13,458.33, with interest from February 1, 1876, under 11 contracts, numbered as follows: 209, 231, 243, 349, 595 (which includes 1057½), 665, 690, 828, 1028, and 1035. This unpaid balance arises from the fact that what is known as "board rates" were not allowed in the adjustment of the claims. The administrator denies the right of any of the assignees in the other causes consolidated herewith to recover from the District of Columbia any part of the above-mentioned amount.

In case No. 150, Samuel J. Ritchie claims the sum of $7,050, with interest from February 1, 1876, under and by virtue of an assignment to him from Downman & Green, dated February 11, 1878. This firm held assignments from Connolly to reimburse them for moneys advanced to aid in carrying on work under contracts Nos. 243 and 1028.

75 In the case No. 162, Harriet T. Galt, executrix of William M. Galt, claims the sum of $2,327, with interest from May 4, 1875, under and by virtue of an assignment to Galt from Connolly, dated July 31, 1876, based upon work done under contract No. 243.

In case No. 280, William A. Gordon and J. Holdsworth Gordon, executors of the estate of Osceola C. Green, deceased, surviving partner of Downman & Green, claim the sum of $4,425.04, with interest from February 1, 1876, under and by virtue of certain assignments and powers of attorney from Connolly to Downman & Green, made in the years 1874 and 1875, for moneys advanced to furnished labor and material under contracts Nos. 243 and 1028. The amount stated is what is left of the unpaid balances aggregating $11,475.04, after satisfying the assignment to Samuel J. Ritchie of $7,050, under the contracts above mentioned.

Pursuant to an agreement between the counsel for the various claimants, the accounts are stated under the contracts between the District

of Columbia and Daniel A. Connolly, upon which it is claimed balances are still due and unpaid. I have deferred the determination of the questions as to the claims of the assignees and the amounts due them under their respective assignments.

A portion of the figures and exhibits employed by a referee in a previous statement to the court have, after verification, been used in the present report.

76 The contracts are taken up and stated in numerical order as follows:

CONTRACT NO. 209.

By this contract (Exhibit 4, D. D., Referee, Docket 280), made and concluded the 20th day of January, 1872, by and between the board of public works of the District of Columbia and Daniel A. Connolly, of the city of Washington, D. C., the said Connolly agreed, among other things, to set the curbstones and to lay and put down the brick foot pavements and the guttering on the west side of Fourth street east, from M street south to Georgia avenue, in the city of Washington, D. C.

In consideration of the work so to be done, it was stipulated in said contract (article 10) that the said Connolly should receive the following prices therefor, viz:

| | Cents. |
|---|---|
| Grading, per cubic yard | 20 |
| Paving with new brick, per square yard | 80 |
| Relaying old brick pavement, per square yard | 25 |
| Setting new curbstones (6 in.), per lineal foot | 30 |
| Resetting old curbstones (4 in.), per lineal foot | 15 |
| Paving with new cobblestones, per square yard | 55 |
| Relaying with old cobblestones, per square yard | 30 |
| Gutter flags (12 inches), per lineal foot | 35 |
| Gutter flags (16 inches), per lineal foot | 50 |

Provided, That bricks shall be furnished by the board at a price not exceeding $11.50 per thousand.

77 The account under contract No. 209 is thus stated:

DR.

| | | |
|---|---|---|
| To total amount of work done and materials furnished by Connolly under said contract, as certified to by the assistant engineer of the board of public works and approved by the chief engineer of said board, at the rates stipulated in the said contract (Exhibit 5, D. D., Referee) | | $2,361.07 |

CR.

| | | |
|---|---|---|
| By payments in certificates of the board of public works: | | |
| No. 990, dated December 23, 1871 | $1,500.00 | |
| No. 376, dated February 6, 1872 | 626.25 | |
| No. 1534 (part), dated April 7, 1873 | 34.90 | |
| | | 2,161.15 |
| Leaving a balance due claimant of | | 199.92 |

This balance of $199.92 consists of an error on the part of the auditor of the board of public works in auditing the account under the said contract No. 209 respecting an item of 714 running feet of 5-inch new curb and setting, allowed by him at 92 cents per foot, being only the cost of furnishing the material, in lieu of 120 cents per foot, the cost of furnishing and setting, making a difference of 28 cents per foot on 714 feet of curb—$199.92, as stated.

78 CONTRACT NO. 231.

By this contract (Exhibit 6, D. D., Referee, Docket 280), made and concluded the 18th day of April, 1872, by and between the board of public works of the District of Columbia and Daniel A. Connolly, of Washington, D. C., the said Connolly agreed, among other things, to construct a 12-inch pipe sewer in front of square 732, a distance of about 300 feet, and connecting with the 15-inch sewer on Second street, in the City of Washington, D. C.

For furnishing all the materials and labor required in the prosecution of the work, it was stipulated in said contract (article 10) that the said Connolly should receive the following prices, viz: Laying and furnishing 12-inch pipe per lineal foot, 88 cents; excavation and refilling, 40 cents per cubic yard, to be measured in excavation only.

The account under contract No. 231 is thus stated:

DR.

| | |
|---|---|
| To total amount of materials furnished and work done under said contract, as certified to by the assistant engineer of the board of public works and approved by the chief engineer of said board (Exhibit 7, D. D., Referee) ..... | $1,149.07 |

79 CR.

| | | | |
|---|---|---|---|
| By materials: | | | |
| 450 feet 12-inch pipe, at 65c. per foot | $292.50 | | |
| 42 feet 12 by 6 inch pipe, at $1.10 per foot ..... | 46.20 | | |
| 1 12-inch bend ..... | 2.75 | | |
| | | $341.45 | |
| By certificates: | | | |
| No. 1474, dated May 11, 1872 .... | 754.79 | | |
| No. 1534 (part), dated April 7, 1873. | 51.10 | | |
| | | 805.89 | |
| | | | 1,147.34 |
| Balance due claimant ..... | | | 1.73 |

This balance of $1.73 arises out of clerical errors on the part of the auditor of the board of public works in stating the account under said contract No. 231.

CONTRACT NO. 243.

By this contract (file No. 1, docket 162), made and concluded the 24th day of April, 1872, by and between the board of public works of the District of Columbia and Daniel A. Connolly, of Washington, D. C.,

the said Connolly agreed, among other things, to furnish at his own proper cost and expense all the necessary materials and labor, and in a good, firm, and substantial manner to grade Massachusetts avenue from New Jersey avenue to Lincoln Square, in the city of Washington, D. C.

80 For furnishing the materials and labor so specified it was stipulated in said contract (article 10) that the said Connolly should receive the following prices therefor: Grading, 30 cents for each cubic yard of earth, sand, or gravel excavated and hauled a distance not exceeding two hundred (200) feet, and 1 cent additional per cubic yard for every two hundred (200) feet of haul beyond the above.

On May 4, 1875, the said contract No. 243, theretofore entered into, was executed and enlarged by and between the Commissioners of the District of Columbia and the said Daniel A. Connolly (file No. 2, docket 162), so as to embrace the following work, viz:

"Grading upon the following streets, between the points named: B street south, between Fourth street east and Boundary; C street north, between Fourth street east and Boundary; A street south, between Third street east and Boundary: D street north, between First and Fourth streets east; Delaware avenue, between C street north and Boundary; E street north, between Second street east and New Jersey avenue; Sixth street east, between Massachusetts avenue and East Capitol street; First street east, between C street north and Boundary; or upon such of these streets as the engineer of the District of Columbia may determine.

"It is understood that the work herein described is in lieu of similar work relinquished on Massachusetts avenue, and the engineer aforesaid shall determine what amount of grading will be a just equivalent for the work relinquished on said Massachusetts avenue, as contemplated by this agreement."

81 On October 6, 1875, the said Daniel A. Connolly entered into another extension of said contract No. 243 (file No. 3, docket 162) with the said Commissioners of the District of Columbia, by which he agreed to relay the old material on Massachusetts avenue, between New Jersey avenue and Lincoln Square, whereever directed by the engineer of the District of Columbia.

It was stipulated in both extensions of said contract No. 243 that the said Connolly, for the work done thereunder, should receive the prices established and paid by the board of public works for the work of similar character: Provided, That payment be made in the bonds issued by the sinking fund commissioners of the District of Columbia, under and by virtue of section 7 of the act of Congress approved June 20, 1874, which bonds shall be accepted and received at their par value.

A controversy having arisen between Connolly and the board of public works in respect to the amount of work done under the original contract No. 243, the matter was referred on November 20, 1873, for adjudication to a commission, consisting of S. T. G. Morsell, Thomas M. Plowman, Joseph F. Collins, and W. P. Bell, and a settlement of the account under said original contract was made in accordance with the award of said commission, as reported by that body to the board of public works November 27, 1873.

82 Referring to the foregoing paragraph, the Court of Claims, in its findings of fact decided May 28, 1894, when this and other cases were before the court under a former accounting by a referee, say that there is not sufficient evidence to support the statement of the referee. In the opinion of the court, delivered by Judge Davis, on page 16 of the said findings of fact, he states that—

"There is no dispute in this matter as to the amount of work done. The point is that Connolly was allowed board of works rates instead of his contract rates in this payment. We do not consider that the referee's report (and we have no other evidence) shows a submission to an arbitration which could produce an award binding and conclusive upon the District, or that the decision of these commissioners effected such a statement as amounts in law to an accord and satisfaction. On the contrary, this report, in our opinion, simply shows a payment made upon the statement of adjusters appointed in the course of business prepared upon the assumption that Connolly should be allowed board rates and not contract rates, an assumption held by this court to be unwarranted."

As the act of February 13, 1895, under which these accounts are now revised, eliminates the objections of the court from the consideration of the claims in controversy, I have restated the said account.

The account between the said board of public works and the said Connolly, under contract No. 243 and extensions thereof, is stated as follows:

83 DR.

| | |
|---|---|
| The amount of work done by said Connolly under said contract, as per award of the commission dated November 27, 1873, as accepted by the assistant engineer and approved by the engineer, B. P. W., in charge: | |
| 105,720 cubic yards grading, at 30c | $31,716.00 |
| 67,713 cubic yards haul, 805 feet over 200 feet, at ¼c | 2,708.52 |
| (This work was commenced and finished before January 1, 1873.) | |
| 38,007 cubic yards haul, 1,000 feet over 200 feet, at 1¼c | 4,750.84 |
| (This work was commenced and finished after January 1, 1873.) | |
| | 39,175.36 |
| Materials furnished and work done under extensions of contract No. 243, at board rates: | |
| Aggregate Massachusetts avenue (file No. 29, docket 280) | 63,730.41 |
| Aggregate D street between Third and Fourth streets (file No. 16, docket 280) | 4,944.40 |
| Aggregate D street NE. between First and Third streets (file No. 25, docket 280) | 1,181.61 |
| Aggregate D street NE. between First and Second streets (file No. 25, docket 280) | 1,351.07 |
| Aggregate Sixth street between East Capitol street and Massachusetts avenue (file No. 28, docket 280) | 10,066.63 |
| Aggregate Sixth street NE. between A and B streets (file No. 21, docket 280) | 734.11 |
| Aggregate Massachusetts avenue between Sixth and Seventh streets NE. (file No. 21, docket 280) | 1,016.75 |
| Aggregate Fifth street between D and F streets NE. (file No. 4, docket 162) | 2,327.91 |
| Total | 125,228.25 |

84 CR.

| | | |
|---|---|---|
| By materials (file No. 29, docket 280), 4,013.51 cubic yards of sand and gravel, at 25c | $1,003.38 | |
| (File No. 20, docket 280) 36 feet 6-inch granite corners, at $1.75 | 63.00 | |

| | | | |
|---|---|---|---|
| (File No. 27, docket 280) 2,036 feet of 5-inch curb, at 95c | $1,934.20 | | |
| 83 feet of 6-inch curb, at $1.12 per foot | 92.96 | | |
| 4 feet of circular curb, at $1.75 per foot | 7.00 | | |
| 2,084 feet 12-inch gutter stone, at 23c. per foot | 479.32 | | |
| 5,396 feet of 16-inch gutter stone, at 36c. per foot | 1,942.56 | | |
| 662 cubic yards of cobblestone, at $1 | 662.00 | | |
| 40,985 bricks, at $10 | 409.85 | | |
| | | $6,594.27 | |
| By certificates of board of public works: | | | |
| No. 1618, dated May 11, 1872 | 1,000.00 | | |
| 1700, dated June 1, 1872 | 1,500.00 | | |
| 1858, dated June 15, 1872 | 2,000.00 | | |
| 1958, dated June 22, 1872 | 3,218.27 | | |
| 2087, dated July 5, 1872 | 1,929.57 | | |
| 2264, dated July 17, 1872 | 3,376.20 | | |
| 85 No. 2555, dated August 5, 1872 | 5,000.00 | | |
| 3572, dated November 30, 187 | 500.00 | | |
| 1515, dated April 4, 1873 | 5,178.38 | | |
| 1868, dated June 3, 1873 | 2,500.00 | | |
| 1869, dated June 3, 1873 | 500.00 | | |
| 1906, dated June 7, 1873 | 1,980.00 | | |
| 4217, dated December 2, 1873 | 3,000.00 | | |
| 4296, dated December 5, 1873 | 7,492.94 | | |
| By board of audit certificates: | | | |
| No. 10971, dated February 1, 1875 | 5,925.18 | | |
| 14115, dated February 1, 1875 | 5,350.60 | | |
| 14116, dated February 1, 1875 | 26.67 | | |
| 14682, dated July 1, 1875 | 9,050.00 | | |
| 14683, dated July 1, 1875 | 21.93 | | |
| 14733, dated August 2, 1875 | 3,955.52 | | |
| 19034 / 19035 dated October 1, 1875 | 16,454.50 | | |
| 19081 / 19082 dated October 1, 1875 | 2,188.56 | | |
| 19340, dated November 1, 1875 | 1,750.86 | | |
| 19480, dated December 1, 1875 | 4,113.62 | | |
| 19559, dated December 1, 1875 | 3,377.26 | | |
| 25038, dated January 1, 1876 | 12,066.17 | | |
| 25039 (part), dated January 1, 1876 | 7,571.72 | | |
| | | $111,027.35 | |
| Total payments | | | $117,621.62 |
| Balance | | | 7,606.63 |

86 To which should be added the following items erroneously charged against Connolly (file 27, docket 280) in respect to materials obtained on the line of improvement of Massachusetts avenue between New Jersey avenue and Lincoln Square, viz:

| | | | |
|---|---|---|---|
| Material retained by property holders: | | | |
| 56.7 feet 5-inch curb, at 95c | $53.87 | | |
| 27,447 bricks, at $10 per M | 274.47 | | |
| 39.5 feet of 12-inch gutter stone, at 23c | 9.10 | | |
| | | $337.44 | |
| Material charged to Campbell and Eslin, intersections of Eighth, Ninth, and Tenth streets: | | | |
| 455 feet of 5-inch curb, at 95c | 432.25 | | |
| 7,048 bricks, at $10 per M | 70.48 | | |
| 328 feet of 12-inch gutter stone, at 23c | 75.44 | | |
| 2130 feet of 16-inch gutter stone, at 36c | 766.80 | | |
| 142.11 cubic yards of cobblestone, at $1 | 142.11 | | |
| | | 1,487.08 | |
| Material returned to property yard: | | | |
| 104 feet of 5-inch curb, at 95c | | 98.80 | |
| | | | $1,923.32 |
| Making the total amount due claimant under contract No. 243 and extensions thereof | | | 9,529.95 |

87 Regarding the foregoing additional credit of $1,923.32 allowed claimant for material retained by property holders, a record of the items composing that aggregate appears in the books of the office of superintendent of property, board of public works. On page 339, old material book, an entry shows that the receipts and affidavits were filed, but they can not now be found in the office of the Commissioners of the District of Columbia.

CONTRACT NO. 349.

By this contract (Exhibit 8, D. D., referee, docket 280), entered into on the 24th day of June, 1872, by and between the board of public works of the District of Columbia and Daniel A. Connolly, of Washington, D. C., the said Connolly agreed, among other things, to furnish, at his own proper cost and expense, all the necessary material and labor, and in a good, firm, and substantial manner to set the curbstones, lay and put down the brick foot pavements, and pave the gutters on the west side of First street east, between B and C streets south, in the city of Washington, D. C.

It was stipulated in and by said contract (article 10) that for the work to be done thereunder, and in all respects completing the same, the said Connolly should receive the following prices, to wit:

88 Grading, 30 cents per cubic yard, including a haul of 200 feet, and one (1) cent additional per cubic yard for every 200 feet of haul beyond the first 200 feet.

| | Cents. |
|---|---|
| Laying brick pavement (new), per square yard | 80 |
| Relaying brick pavement (old), per square yard | 25 |
| (Provided, that the board shall furnish bricks at a price not exceeding $11.50 per thousand.) | |
| Setting curbstone (new 8-inch), per lineal foot | 40 |
| Setting curbstone (new 6-inch), per lineal foot | 30 |
| Setting curbstone (new 5-inch), per lineal foot | 25 |
| Resetting curbstone (old 4-inch), per lineal foot | 15 |
| Laying cobblestone (new), per square yard | 55 |
| Relaying cobblestone (old), per square yard | 30 |
| Gutter flags (12-inch), per lineal foot | 35 |
| Gutter flags (16-inch), per lineal foot | 50 |
| Gutter flags (12-inch), relaying, per lineal foot | 12 |
| Gutter flags (16-inch), relaying, per lineal foot | 12 |

The account under said contract No. 349 is stated as follows:

DR.

To amount of work done and materials furnished by the said Connolly under said contract No. 349, as certified to by the assistant engineer of the board of public works, and approved by the chief engineer of said board, at board rates:

| | | |
|---|---|---|
| 89 Exhibit 9, D. D., referee, docket 280 | $799.41 | |
| Materials furnished and work done under said contract, under the Commissioners of the District of Columbia, as approved by Lieutenant R. L. Hoxie, engineer, District of Columbia (Exhibit 10, D. D., referee, docket 280) | 4,927.31 | |
| | | $5,726.72 |
| Less a deduction for inferior material and workmanship on 1,303.36 square yards of brick pavement, at 25c per yard | | 325.84 |
| | | $5,400.88 |

CR.

| | | |
|---|---|---|
| By certificates: | | |
| No. 2208, dated July 11, 1872 | $741.41 | |
| 1534, dated April 7, 1873 | 13.20 | |
| 10917 } dated December 1, 1874 | 2,932.30 | |
| 10918 } | | |
| 10945, dated December 1, 1874 | 928.29 | |
| | | 4,615.20 |
| Leaving a balance due claimant under said contract No. 329 of | | $785.68 |

90 CONTRACTS NOS. 595 AND 1057½.

By contract No. 595 (Exhibit 19, D. D., referee, docket 280), made and concluded the 12th day of November, 1872, by and between the said board of public works and the said Daniel A. Connolly, as aforesaid, to set the curbstones and lay and put down cobblestone in gutters on the north side of A street south between Sixth and Seventh streets east; also, to grade A street south between First and Second streets east.

The prices stipulated to be paid Connolly for the work to be done under this contract are as follows:

| | Cents. |
|---|---|
| Setting curbstones, new, 8-inch, per lineal foot | 40 |
| Setting curbstones, new, 6-inch, per lineal foot | 30 |
| Setting curbstones, new, 5-inch, per lineal foot | 25 |
| Resetting curbstones, old, 4-inch, per lineal foot | 15 |
| Laying cobblestone pavement, per square yard | 55 |
| Relaying cobblestone pavement, per square yard | 30 |
| Gutter flags, 12-inch, per lineal foot | 35 |
| Gutter flags, 16-inch, per lineal foot | 50 |

Grading, 30 cents per cubic yard, to include the first 200 feet of haul, and 1¼ cents per cubic yard for each additional 100 feet of haul beyond the first 200 feet.

91 By contract No. 1057½ (Exhibit 20, D. D., referee, docket 280), made and entered into on the 8th day of April, 1874, the said Daniel A. Connolly agreed to lay and put down the pavement known as and called the "Phillips Round Block Pavement" on the carriageway of A street SE., between First and Second streets.

No price is stipulated in said contract No. 1057½ for the work to be done thereunder.

The account under said contracts Nos. 595 and 1057½ is stated as follows:

DR.

| | | |
|---|---|---|
| To amount of work done under said contracts Nos. 595 and 1057½, as per vouchers and other papers: | | |
| Aggregate (Exhibit 21, D. D., referee, docket 280) | $9,582.23 | |
| Aggregate (Exhibit 22, D. D., referee, docket 280) | 321.31 | |
| Aggregate (Exhibit 23, D. D., referee, docket 280) | 8.89 | |
| Total | | $9,912.43 |

CR.

| | | | |
|---|---|---|---|
| By 127 feet of old curb, at 95c | $120.65 | | |
| Cost of inferior brick pavement | 208.31 | | |
| | | $328.96 | |
| 92 By certificates: | | | |
| No. 4032, dated November 5, 1873 | $2,000.00 | | |
| 1300, dated April 21, 1874 | 4,400.00 | | |
| 10582, dated August 1, 1874 | 1,635.00 | | |
| 10894, dated November 1, 1874 | 1,151.62 | | |
| 14014, dated December 1, 1874 | 321.31 | | |
| 14131 (part), dated August 1, 1874 | 8.89 | | |
| | | 9,515.82 | |
| | | | $9,845.78 |
| Balance due claimant under said contracts Nos. 595 and 1057½ | | | 66.65 |

CONTRACT NO. 665.

By the terms of this contract (Exhibit 24, D. D., referee, docket 280), which instrument was dated April 22, 1873, the said Daniel A. Connolly agreed to grade, set the curbstones, lay and put down the brick foot pavements on B street north, between Second and Fourth streets east, and to grade alley in square numbered 758.

The rates to be paid (article 10) are specified as follows:

Grading 30 cents per cubic yard, to include the first 200 feet of haul, and one cent per cubic yard for every additional 200 feet of haul
93 beyond the first 200 feet. Grading old graveled streets, for first two feet per cubic yard, 40 cents.

| | Cents. |
|---|---|
| Laying brick pavement, new, per square yard | 80 |
| Relaying brick pavement, old, per square yard | 25 |

Bricks were to be furnished by the board of public works, at a cost not exceeding $11.50 per thousand, and for setting and resetting curbstones the customary board rates were to be allowed.

The account under said contract No. 665 is stated as follows:

DR.

| | | |
|---|---|---|
| The amount of work done under said contract No. 665, as certified to by the engineer of the District of Columbia: | | |
| Aggregate (Exhibit 25, D. D., referee docket 280) | | $11,446.94 |
| Extra work (file 9, docket 280) | | 229.42 |
| Extra work (Exhibit, part No. 23, D. D., referee, docket 280) | | 23.80 |
| Total | | 11,700.16 |

CR.

| | | | |
|---|---|---|---|
| By 340 feet of 4½ curb, at 70c | | $238.00 | |
| Inferior workmanship | | 257.94 | |
| Work done by private parties | | 243.56 | |
| | | | 739.50 |
| 94 By certificates: | | | |
| No. 2009, dated July 2, 1873 | 2,957.40 | | |
| 2698 to 2700 (part), dated August 28, 1873 | 2,000.00 | | |
| 3386 to 3391, dated October 13, 1873 | 3,000.00 | | |
| 1492, dated May 25, 1874 | 700.00 | | |
| 10582 (part), dated August 1, 1874 | 1,177.57 | | |
| 14131 (part), dated August 1, 1874 | 23.80 | | |
| 10973, dated February 1, 1875 | 545.64 | | |
| | | 10,404.41 | |
| | | | 11,143.91 |
| To balance due claimant under said contract No. 665 | | | $556.25 |

CONTRACT NO. 690.

According to this agreement (Exhibit 27, D. D., referee, docket 280), which was entered into on the 20th day of May, 1873, the said Daniel A. Connolly agreed to grade, set the curbstone, and lay and put down the brick foot pavements on B street north, from Delaware avenue to Second street east; also to grade the carriageway, set the curbstones, and lay and put down the brick foot pavements on First street east, between
95 East Capitol street and B street north; also to grade the sidewalks on the east side of First street east, between A and B streets north.

This contract, although bearing date as of May 20, 1873, does not appear to have been executed until November, 1873, as the records of the Board of Public Works show that several amendments and modifications of said contract were ordered to be made between May and November, 1873, the last amendment ordered being November 1, 1873, all of which appear in the body of the contract as of May 20, 1873.

The amendments referred to, together with the original award, numbered, respectively, Exhibits Nos. 28 to 33, inclusive, D. D., referee, docket 280, are as follows:

On May 20, 1873, B. Oertly, deputy engineer, sent a written order to W. E. Nott, esq., contract clerk, under an order of the board of the 19th of May, 1873, directing him to prepare a contract with Daniel A. Connolly for grading, setting curb, and laying the sidewalks on B street north, from Delaware avenue to First street east; and First street east, from B street north to B street south; work to be completed in 30 working days, and the dirt to be deposited in the reservation at the foot of the Capitol.

On January 10, 1873, B. Oertly, deputy engineer, under direction of the board, ordered William E. Nott, esq., contract clerk, to amend contract No. 690, with D. A. Connolly, so as to include grading B street, between First and Second streets NE.

96 On August 25, 1873, Charles E. Barney, assistant engineer, directed William E. Nott, esq., contract clerk, under an order of the board, among other things, to cancel so much of contract No. 690, with D. A. Connolly, as relates to First street east, between East Capitol street and B street.

On September 26, 1873, Adolf Cluss, engineer in charge, by order of the board, directed William E. Nott, esq., contract clerk, to amend contract No. 690, with D. A. Connolly, so as to include setting curbs and laying sidewalks on B street, between First and Second streets NE.

On October 3, 1873, Adolf Cluss, engineer in charge, by order of the board, directed William E. Nott, esq., contract clerk, to amend contract No. 690, with D. A. Connolly, so as to include the cutting down the sidewalk on the east side of First street east, between A street north and B street south, so that the foot walk may be laid.

On November 1, 1873, Adolf Cluss, engineer in charge, in accordance with instructions from the board of that date, notified William E. Nott, esq., contract clerk, that D. A. Connolly had been allowed 40 cents per cubic yard for grading First street east.

The prices stipulated to be paid for doing the work embraced in contract No. 690 (article 10) are as follows:

Grading, 30 cents per cubic yard, to include the first 200 feet of haul, and one cent additional per cubic yard for every additional 200 feet of haul beyond the first 200 feet for B street; and 40 cents per cubic
97 yard for First street, the conditions as to haul being the same as on B street. For laying brick foot pavements and setting curbstones the rates are the same as those specified in other contracts in this cause.

In view of the differences between the orders to the contract clerk and the contract itself, as also from the fact that the engineers' certificates of measurement of work done on First street east does not state that said work was done under any contract, but gives the limits as First street east, between B street south and C street north (the limits expressed in the contract being between East Capitol street and B street north), the account is stated in accordance with the engineers' certificate and the audit as made by the auditor of the board of public works.

The following is the statement of the account under contract No. 690:

DR.

| | | | |
|---|---|---|---|
| To amount of work done under said contract No. 690, as per the final measurement of Assistant Engineer Charles E. Barney: | | | |
| First street east, B south to C north (Exhibit 34, D. D., referee, docket 280), aggregate as per engineer's certificate | | | $41,826.39 |
| B street NE., between First and Second streets (Exhibit 35, D. D., referee, docket 280), aggregate as per engineer's certificate | | | 6,170.19 |
| 98 Extra work (Exhibit 23, D. D., referee, docket 280) | | | 266.26 |
| Extra work (file 9, docket 280) | | | 9.80 |
| | | | $48,272.64 |

CR.

| | | | |
|---|---|---|---|
| By materials: | | | |
| 2,825½ feet of 6-inch curb, at $1.12 | $3,164.22 | | |
| 428½ feet of 8-inch curb, at $1.75 | 750.22 | | |
| 55 feet of circular curb, at $1.75 | 96.25 | | |
| 140 feet of 5-inch curb, at 95c | 133.00 | | |
| 638½ feet of 6-inch curb, at $1.12 | 715.03 | | |
| Permit work | 70.00 | | |
| Inferior parking | 246.45 | | |
| Inferior brick pavement | 230.12 | | |
| | | 5,405.29 | |
| By certificates: | | | |
| No. 2239, dated July 16, 1873 | 12,000.00 | | |
| 2471, } dated August 9, 1873 | 12,000.00 | | |
| 2472, } | | | |
| 2700, dated August 28, 1873 | 1,000.00 | | |
| 2952, dated September 16, 1873 | 8,000.00 | | |
| 4053, dated November 25, 1873 | 2,500.00 | | |
| 99 4861, dated December 31, 1873 | 2,267.43 | | |
| 10582 (part), dated August 1, 1874 | 112.15 | | |
| 10972, dated February 1, 1875 | 4,510.81 | | |
| 14131 (part), dated August 1, 1874 | 266.26 | | |
| 14467, dated June 1, 1875 | 180.21 | | |
| | | 42,836.86 | |
| | | | 48,242.15 |
| To balance due claimant under contract No. 690 | | | 30.49 |

## CONTRACT NO. 828.

By this agreement (Exhibit 39, D. D., referee, docket 280, entered into on the 8th day of August, 1874, the said Daniel A. Connolly agreed

to excavate for, construct, and complete with necessary manholes and traps, a twelve-inch pipe sewer in alley in square No. 686.

The account under said contract No. 828 is stated as follows:

DR.

| | | |
|---|---|---|
| To amount of work done under the said agreement (contract No. 828), as per file 9, docket 280 | $859.52 | |
| Per file 28, docket 280 | 300.04 | |
| | | $1,159.56 |

100

CR.

| | | |
|---|---|---|
| By materials: | | |
| 426 feet of 12-inch pipe, at 65c | $276.90 | |
| 36 feet of 12 by 6 inch pipe, at $1.10 | 39 60 | |
| | 316.50 | |
| By certificate: | | |
| No. 10582, dated August 1, 1874 | 543.02 | |
| Total | | 859.52 |
| To balance due claimant under Contract 828 | | 300.04 |

CONTRACT NO. 1028.

By this agreement (file No. 1, docket 280), dated January 30, 1874, the said Daniel A. Connolly agreed to furnish, at his own proper cost and expense, all the necessary materials and labor, and in a good, firm, and substantial manner to grade G street north, between Second and Fifth streets east; also, to grade Second street east, between Maryland avenue and D street north, at the following prices (article 10):

Grading, 30 cents per cubic yard, to include the first 200 feet of haul, and 1¼ cents per cubic yard for every additional 100 feet of haul beyond the first 200 feet.

On May 18, 1875, the said contract 1028 was extended by the Commissioners of the District of Columbia so as to embrace the fol-

101 lowing work, to wit: Replace the old material that is to say, reset the curbs and relay the brick foot-pavements wherever ordered by the engineer of the District of Columbia, on streets the improvement of which are embraced in said contract No. 1028.

For the work to be done under said extension it is therein stipulated that he shall receive the prices established and paid by the board of public works for work of similar character. (File 2, docket 280.)

The account under said contract 1028 and extension thereof is stated as follows:

DR.

| | | |
|---|---|---|
| To amount of work done under said contract and extension (contract 1028), as per the following aggregates: | | |
| Second street NE., Maryland avenue to D (file 11, 280) | $2,782.37 | |
| G street NE., Second to Fifth (file 14, docket 280) | 2,265.66 | |
| Second street NE., between B and D streets (file 22, docket 280) | 184.00 | |
| Second street NE., Maryland avenue to D street (file 26, docket 280) | 2,100.21 | |
| Second street NE., Maryland avenue to D street (file 26, docket 280) | 7,663.57 | |
| Second street NE., between D and E streets (file 28, docket 280) | 2,931.58 | |
| | | $17,927.39 |

102

Cr.

By materials:

| | | |
|---|---|---|
| File 17, docket 280: | | |
| 99 feet of 6 inch pipe, at 17c | $16.83 | |
| 111 feet of 12-inch pipe, at 65c | 72.15 | |
| 45 feet of 12 by 6 inch pipe, at $1.10 | 49.50 | |
| File 18: | | |
| 288 feet of 12-inch pipe, at 65c | 187.20 | |
| File 21: | | |
| 520 feet of 15-inch pipe, at $1.10 | 572.00 | |
| 81 feet of 15 by 6 inch pipe, at $1.50 | 121.50 | |
| 963 feet of 12-inch pipe, at 65c | 625.95 | |
| 117 feet of 12 by 6 inch pipe, at $1.10 | 128.70 | |
| 353 feet of 6-inch pipe, at 17c | 60.01 | |
| 275 cubic yards of gravel, at 25c | 68.75 | |
| File 26: | | |
| 494.8 cubic yards of gravel, at 25 cents | 123.70 | |
| | | $2,026.29 |
| By certificates: | | |
| No. 4400, dated December 9, 1873 | 1,500.00 | |
| 10582 (part), dated August 1, 1874 | 2,025.16 | |
| 13688, dated August 1, 1874 | 2,225.90 | |
| 14132, dated August 1, 1874 | 240.50 | |
| 103 No. 19363, dated December 1, 1875 | 184.00 | |
| 19560, dated December 1, 1875 | 5,435.18 | |
| 25039 (part), dated January 1, 1876 | 2,345.27 | |
| | 13,956.01 | |
| | | $15,982.30 |
| To balance due claimant under said contract No. 1028 | | 1,945.09 |

## CONTRACT NO. 1035.

By this agreement (Exhibit 41, D. D., referee, docket 280), entered into on the 5th day of March, 1874, by and between the board of public works of the District of Columbia and Daniel A. Connolly, of Washington, D. C., the said Connolly agreed to furnish, at his own proper cost and expense, all the necessary materials and labor, and in a good, firm, and substantial manner to grade, set the curbstones, and lay and put down the brick foot pavements on Carroll street, running through square No. 732.

For the performance of the work therein embraced he was to receive the following prices, as per article 10:

Grading, 30 cents per cubic yard, to include the first 200 feet of haul, and 1¼ cents per cubic yard for every additional 100 feet of haul beyond the first 200 feet.

104 Laying brick foot pavement, new, per square yard, $1; relaying brick foot pavement, old, per square yard, 25 cents; and for setting and resetting curbstones, the usual board rates.

The account under said contract No. 1035 is stated as follows:

Dr.

| | | |
|---|---|---|
| To amount of work done under contract No. 1035, as per the following aggregates: | | |
| Exhibit 42, D. D., referee, docket 280 | $3,512.16 | |
| Exhibit 23, D. D., referee, docket 280 | 239.82 | |
| | | $3,751.98 |

Cr.

| | | |
|---|---|---|
| By material: | | |
| 1,149 feet of old curb, at 70c | $804.30 | |
| Sand and gravel | 27.00 | |
| Cost of removing dirt | 270.00 | |
| Other charges | 17.97 | |
| | | 1,119.27 |

105 By certificates:

| | | |
|---|---|---|
| No. 10882, dated August 1, 1874 | $2,110.36 | |
| 10965, dated August 1, 1874 | 240.00 | |
| 14131 (part), dated August, 1874 | 239.82 | |
| | $2,590.18 | |
| | | $3,709.45 |
| To balance due claimant under contract No. 1035 | | 42.53 |

RECAPITULATION.

To amounts due under the foregoing contracts:

| | |
|---|---|
| Contract No. 209, page | $199.92 |
| No. 231, page | 1.73 |
| No. 243, page | 9,529.95 |
| No. 349, page | 785.68 |
| No. 595, 1057½, page | 66.65 |
| No. 665, page | 556.25 |
| No. 690, page | 36.49 |
| No. 828, page | 300.04 |
| No. 1028, page | 1,945.09 |
| No. 1035, page | 42.53 |
| To balance due claimant, with interest from February 1, 1876 | 13,458.33 |

106 I find that the District of Columbia is indebted to Columbus J. Eslin, the original contractor in these cases, or his legal representatives, for labor done and materials furnished to the said District, at board rates, under the contracts aforesaid, in the aggregate sum of thirteen thousand four hundred and fifty-eight dollars and thirty-three cents ($13,458.33).

At a convention of the attorneys of the various claimants herein the following agreement was entered into:

STIPULATION.

It is hereby stipulated and agreed between the parties in the above cases, whose claims are all based upon the contracts of Daniel A. Connolly with the District of Columbia:

That if the sum of thirteen thousand two hundred and seventy-eight dollars and twenty-one cents ($13,278.21) is found to be due from the District of Columbia on account of said contracts, it shall be distributed among the parties as follows:

Harriet T. Galt, executrix of William M. Galt, two thousand dollars ($2,000.00).

William A. Gordon et al., executors of Osceola C. Green, surviving partner of Downman & Green, $1,232 75/100 dollars ($1,232 75/100).

107 Samuel J. Ritchie, $5,267 25/100 dollars ($5,267.75).

The total to be paid in the cases Nos. 289 and 150, to Downman & Green and Samuel J. Ritchie, being six thousand five hundred dollars ($6,500.00).

Columbus J. Eslin, administrator of Daniel A. Connolly, four thousand seven hundred and seventy-eight dollars and twenty-one cents ($4,778.21).

It is further agreed that in case of any reduction of the total amount found due from the District of Columbia below the sum of thirteen thousand two hundred and seventy-eight dollars and twenty-one cents ($13,278.21) the estate of said Galt is to receive the full amount of two

thousand dollars ($2,000.00), as hereinbefore stated, and the remaining parties are to divide the balance pro rata between them in proportion to the amounts above agreed upon.

And the parties to the above-named actions respectfully request the referee in this cause to report the indebtedness of the District of Columbia to the respective claimants in accordance with the above stipulation, and respectfully move that the judgment of the court be entered in each case in accordance with the proportion above as a full settlement of the demands embraced in the respective petitions.

CHARLES & WM. B. KING,
*Attorneys for Columbus J. Eslin, Admr. of Daniel A. Connolly.*

108 J. W. DOUGLASS,
*Attorney for William A. Gordon et al., Executors.*

SHELLABARGER & WILSON,
*Attorneys for Samuel J. Ritchie.*

GEORGE A. KING,
*Attorney for Harriet T. Galt, Exec'x.*

[Endorsement.]

It having been found that the amount due from the District of Columbia is $13,458.33, it is agreed that the difference of $180.12 between this amount and the total stated herein of $13,378.21 shall be divided among the parties in the ratio herein fixed.

CHARLES & WM. B. KING,
*Attorneys for Eslin, Admr.*

J. W. DOUGLASS,
*for D. & G.*

SHELLABARGER & WILSON,
By HEMPHILL,
*for Ritchie.*

GEORGE A. KING,
*for Harriet T. Galt.*

109 Under and by virtue of the provisions contained in the aforesaid agreement, and in accordance with the evidence filed in these cases, I report that the following-named claimants are entitled to the judgment of this court in the sum set opposite their respective names, as debts due and payable by the District of Columbia on February 1, 1876:

| | |
|---|---|
| Columbus J. Eslin, administrator of Daniel A. Connolly, cause No. 375, four thousand eight hundred and forty-one dollars and twenty-six cents | $4,841.26 |
| Samuel J. Ritchie, cause No. 150, five thousand three hundred and thirty-nine dollars and thirty cents | 5,339.30 |
| Harriet T. Galt, executrix of William M. Galt, cause No. 162, two thousand and twenty-seven dollars and one cent | 2,027.01 |

William A. Gordon and J. Holdsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, cause No. 280, one thousand two hundred and fifty dollars and seventy-six cents..... $1,250.76

13,458.33

110 On the above-stated sum of $13,458.33 the claimants are entitled to interest from February 1, 1876, the date at which the principal became due and payable, at the rate of three cents and sixty-five hundredths of a cent per centum (3.65%) per annum.

The stipulation referred to is filed herewith, marked Exhibit A, J. W. A., referee.

Respectfully submitted.

(Signed) JOHN W. ANDERSON, *Referee.*

111 *Judgment entered June 22, 1896.*

At a Court of Claims held in the city of Washington on the 22d day of June, 1896, judgment was ordered to be entered as follows in the consolidated cases of Columbus J. Eslin, admr. of Daniel A. Connolly, dec'd, vs. District of Columbia, No. 375; Samuel J. Ritchie vs. Same, No. 150; Harriet T. Galt, exrx. of William M. Galt, dec'd, vs. Same, No. 162; William A. Gordon and J. Holdsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green vs. Same, No. 280.

The court, upon due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said Columbus J. Eslin, as administrator of Daniel A. Connolly, deceased, do have and recover the sum of four thousand eight hundred and forty-one dollars and twenty-six cents ($4,841.26); that the said Samuel J. Ritchie do have and recover the sum of five thousand three hundred and thirty-nine dollars and thirty cents ($5,339.30); that the said Harriet T. Galt, as
112 executrix of William M. Galt, deceased, do have and recover the sum of two thousand and twenty-seven dollars and one cent ($2,027.01); and that William A. Gordon and J. Holdsworth Gordon, as executors of Osceola C. Green, surviving partner of Downman & Green, do have and recover the sum of one thousand two hundred and fifty dollars and seventy-six cents ($1,250.76), amounting in all to the sum of thirteen thousand four hundred and fifty-eight dollars and thirty-three cents ($13,458.33), upon debts of the District of Columbia due and payable February 1, 1896, within the intent and meaning of the act of February 13, 1895.

BY THE COURT.

113 *Defendant's application for appeal.*

Dec. term, 1895–96.

| | | |
|---|---|---|
| COLUMBUS J. ESLIN, ADMINISTRATOR OF Daniel A. Connolly, *vs.* THE DISTRICT OF COLUMBIA. | No. 375. | Consolidated. |
| SAMUEL J. RICHIE *vs.* THE DISTRICT OF COLUMBIA. | No. 150. | |
| HARRIET T. GALT, EXECUTRIX OF William M. Galt, *vs.* THE DISTRICT OF COLUMBIA. | No. 162. | |
| WILLIAM A. GORDON AND J. Holdsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, *vs.* THE DISTRICT OF COLUMBIA. | No. 280. | |

From the judgment rendered in the above-entitled causes, consolidated on the 22nd day of June, 1896, in favor of claimants, the defendant, by the Attorney-General, on the 3rd day of September, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
*Assistant Attorney-General.*

Filed September 3, 1896.

114 In the Court of Claims.

| | |
|---|---|
| COLUMBUS J. ESLIN *vs.* THE DISTRICT OF COLUMBIA. | No. 375, D. C. |
| S. J. RITCHIE *vs.* THE DISTRICT OF COLUMBIA. | No. 150, D. C. |
| H. T. GALT, EXRX. OF W. M. GALT, *vs.* THE DISTRICT OF COLUMBIA. | No. 162, D. C. |
| W. A. GORDON AND J. H. GORDON, executors of O. C. Green, *vs.* THE DISTRICT OF COLUMBIA. | 280, D. C. |

*Motion for a new trial.*—Filed Feb'y 25, 1897.

Now comes defendant, The District of Columbia, by the Attorney-General of the United States, and moves the court to set aside the judgment entered in this cause on the 22nd day of June, A. D. 1896, and to grant a new trial herein for the following reasons, viz:

I.

For error in the court in this: That the court gave judgment for
115 claimants, Columbus J. Eslin, S. J. Ritchie, H. T. Galt, admrx. of W. M. Galt, Wm. A. Gordon and J. H. Gordon, admrs. of O. C. Green, as due and payable February 1st, 1876, the effect of which was to give interest upon the amount of said judgment from that date, whereby great wrong and injustice was done to the United States and the District of Columbia.

II.

For error in the court in adjudging that the amounts allowed became due and payable before the granting of the judgment herein, whereby wrong and injustice was done to the United States and the District of Columbia.

J. E. DODGE,
*Assistant Attorney-General.*

JANUARY 15, 1900.

Ordered that the foregoing motion for new trial in these cases be overruled.

BY THE COURT.

116 In the Court of Claims.

Term 1899–1900.

*Motion for allowance of appeal, March 1, 1900.*

COLUMBUS J. ESLIN, ADMINISTRATOR OF Daniel A. Connolly,
*v.*
THE DISTRICT OF COLUMBIA. } No. 375.

Consolidated with

SAMUEL J. RITCHIE
*v.*
THE DISTRICT OF COLUMBIA; } No. 150.

HARRIET T. GALT, EXECUTRIX OF WILLIAM M. GALT,
*v.*
THE DISTRICT OF COLUMBIA; } No. 162.

WILLIAM A. GORDON AND J. HOLDSWORTH GORDON, executors of Osceola C. Green, surviving partner of Downman & Green.
*v.*
THE DISTRICT OF COLUMBIA. } No. 280.

*Motion for allowance of appeal.*

Now comes the District of Columbia, by the Attorney-General of the United States, and prays for the allowance of the appeal heretofore applied for from the judgment of the court rendered herein on the 22d day of June, 1896.

L. A. PRADT,
*Assistant Attorney-General.*

MARCH 1, 1900.

Ordered that this application for appeal be now allowed as prayed for.
BY THE COURT.

117 Court of Claims.

COLUMBUS J. ESLIN, ADMR. OF DANIEL A. CONNOLLY, deed., *vs.* DISTRICT OF COLUMBIA, } 375.

Consolidated with

SAMUEL J. RITCHIE *vs.* DISTRICT OF COLUMBIA; } 150.

HARRIET T. GALT, EXECUTRIX OF WILLIAM M. GALT, deed., *vs.* DISTRICT OF COLUMBIA; } 162.

and

WILLIAM A. GORDON AND J. HOLDSWORTH GORDON, executors of Osceola C. Green, surviving partner of Downman and Green, *vs.* DISTRICT OF COLUMBIA. } 280.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of pleadings in the above-consolidated cases; of the findings of fact and conclusions of law filed by the court; of the opinions of the court; of motions for new trial, and the ruling of the court thereon; of the judgment of the court; of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 29 day of March, A. D. 1900.

[SEAL.]

JOHN RANDOLPH,
*Asst. Clerk Court of Claims.*

(Indorsement on cover:) File No., 17698. Court of Claims. Term No., 237. The District of Columbia, appellant, vs. Columbus J. Eslin, administrator of Daniel A. Connolly, deceased, et al. Filed March 30, 1900.

O